

STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 13-CF-1074

CHONG LENG LEE,

Defendant.

ORIGINAL

MOTION HEARING

CLERK OF CIRCUIT COURT
OUTAGAMIE COUNTY FILED

OCT 15 2015

BEFORE:

HONORABLE GREGORY B. GILL, JR.
Circuit Court Judge, Branch IV
Outagamie County Justice Center
Appleton, WI 54911

AT _____ O'CLOCK

DATE:

September 29, 2015

APPEARANCES:

CARRIE SCHNEIDER
District Attorney
Appearing on behalf of the State

ANDREW MAIER, ALEXANDER DUROS and PETER
HAHN
Assistant District Attorneys
Appearing on behalf of the State

DEBORAH VISHNY and EVAN WEITZ
Attorneys at Law
Appearing on behalf of the Defendant

CHONG LENG LEE
Defendant
Appearing in person

Joan Biese
Official Reporter, Branch IV
Outagamie County

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESSES

PAGE

NEAL RABAS

Examination by Attorney Vishny.....	13
Examination by Attorney Schneider.....	48
Examination by Attorney Vishny.....	74
Examination by Attorney Schneider.....	82
Examination by Attorney Vishny.....	83
Continued examination by Attorney Vishny.....	112
Examination by Attorney Schneider.....	113

CHUE LEE THAO

Examination by Attorney Vishny.....	84
Examination by Attorney Schneider.....	103
Examination by Attorney Vishny.....	110
Examination by Attorney Schneider.....	111

ERIC HOLDORF

Examination by Attorney Vishny.....	155
Examination by Attorney Schneider.....	160
Examination by Attorney Vishny.....	162

EXHIBIT

1 - Photo -- White Board.....	35
-------------------------------	----

1 looking for responses or just additional information
2 on those four items. I had Sergeant Rabas, the same
3 day, forwarded it to him. He started working on
4 that. We got a response from Sergeant Rabas. I
5 shared that electronically, the reports, with
6 Attorney Vishny yesterday and then today gave her the
7 hard copy, and there is a disk with some -- two
8 recordings. I think from her discussions or our
9 discussions she has some additional questions for
10 Sergeants Chue and Sergeant Rabas, some on the same
11 issues we were dealing with in May and June, maybe
12 some additional questions on these four items she had
13 on the list, so she wants to take some additional
14 testimony from them.

15 I think then the plan is on those items we would
16 ask and try to establish a briefing schedule of when
17 things can be due over the next several weeks. We
18 have -- the court never really set a date for witness
19 list, verdict form, jury instructions. We can
20 probably talk about that. I mention that because one
21 of the things my investigators have on their to do
22 list is running prior conviction checks on witnesses,
23 and so they can start working on that, but it's
24 something we can then address on the November dates.
25 I don't think we've ever set a motion date or a

1 deadline for -- I call it like the generic
2 housekeeping motions, how many alternates,
3 sequestration, some of those generic things, so we
4 could probably set a deadline for those prior to the
5 November dates.

6 I will provide some additional information on a
7 couple other items we've talked about at previous
8 hearings, some are just issues Miss -- Attorney
9 Vishny and I have to further discuss. I can provide
10 an update on the transcript issue.

11 But I don't have anyone that I would be calling
12 as a witness today. Obviously I might have questions
13 for Sergeant Rabas and Sergeant Thao based upon
14 questions Attorney Vishny or Weitz might ask, but
15 that's kind of the list of the things I had for us to
16 look at today.

17 THE COURT: Okay. And you had discussed
18 the previous motion and some items that would be
19 turned over, and I know we had spent some time at the
20 last hearing, and I -- I was looking over that
21 transcript, but there was concerns as it related to,
22 I believe, the interviews of three individuals.
23 There were initial interviews, there was going --
24 those were subsequently deleted, and I know that
25 there was some concern about that, but there was

1 going to be an effort to obtain those recordings in
2 hopes that some backup may be located on a server or
3 something.

4 ATTORNEY SCHNEIDER: And I think we
5 provided some updates between the May and the June
6 hearings because we checked some locations, but I can
7 tell you since June they've continued to look in
8 different locations. Sergeant Meyer has since
9 retired, and I think the court was aware of that
10 because of scheduling with him last time. There's
11 been a look there. Sergeant Thao even told me today
12 that they sent his digital recorder at some point to
13 some other place for it to be checked to see if
14 anything was still on there that might have been
15 deleted previously. So we've not found any of those
16 original recordings, which is kind of what we --
17 where we were last time. We gave an update to what
18 we had checked, they were checking some additional,
19 but I think at this point they've looked everywhere
20 they can think of and looked on backups and in the
21 computer and in the overall evidence BEAST system,
22 and those they cannot locate.

23 THE COURT: So, okay, Attorney Vishny, any
24 additional issues that you would like to have
25 addressed today other than those outlined by Attorney

1 Schneider?

2 ATTORNEY VISHNY: One minute, Judge.

3 Sorry. I'm just trying to be organized here.

4 THE COURT: No.

5 ATTORNEY VISHNY: First of all, I thought
6 today the court was going to rule on three issues,
7 the gang cross issue, the beat your case issue, and
8 the Facebook issue. I did not hear -- I mean, I have
9 been working on this, but I thought you just said
10 this morning the Facebook issue.

11 THE COURT: You heard two of the three. I
12 was of the impression, and maybe I'm misunderstanding
13 what you're asking, the -- I thought we had already
14 resolved the gang issue some time ago.

15 ATTORNEY VISHNY: Well, I think the
16 question was if I cross-examined -- what hasn't
17 really been ruled on is how much cross-examination I
18 get to get into without, quote, unquote, opening the
19 door. Because what happens in these interrogations
20 of these witnesses, definitely Joe Thor, and I think
21 others as well, you know, I didn't refresh my memory,
22 but I know we've written on this, that, you know,
23 telling these people, well, you're in a gang so
24 therefore, you know, you're guilty, and this is not
25 what the exact words are, I'm just paraphrasing, but

1 inferring that they are guilty because they're in a
2 gang. It was my position that the defense should be
3 allowed to cross-examine them, you know, not for the
4 purpose of showing that in fact Joe Thor or Paul Lee
5 is in fact in a gang, but for showing that when
6 interrogated by the police and confronted by the
7 police in this manner, that, you know, they had
8 substantial exposure for this homicide and that they
9 were suspects because of what the police believed
10 their affiliations to be, that that went to their
11 motives to testify untruthfully. So, you know, we
12 had written a memo of law on that issue, and I don't
13 think we've had the specific ruling as to that issue.

14 THE COURT: Okay.

15 ATTORNEY VISHNY: So -- so that's different
16 than trying to prove they are in fact in a gang for
17 the truth of the matter asserted, and it's my
18 position that that should not open the door to the
19 State trying to prove Chong Lee is in a gang for the
20 truth of the matter asserted. So that's another
21 ruling.

22 As far as the discovery issues, okay, so then
23 you're going to rule on the beat your case stuff
24 today. Okay.

25 As far as the other issues that present

1 themselves in this case, there are other issues.
2 Number one, these translations. They were to have
3 been provided completely to the defense by the August
4 court date which was canceled. It's a month later.
5 We don't have them. I'm asking the court to suppress
6 anything that we aren't provided with by today, and
7 I'd ask you for a ruling on that today so I know
8 that's going on.

9 Number two, I'm advising the State that we do --
10 defense is going to be calling an expert witness in
11 this trial. I don't have the full report from my
12 expert yet, but there is an expert named James
13 T-R-A-I-N-U-M, he's a police practices expert,
14 retired homicide detective out of Washington DC, who
15 does quite a bit of case review, review of sentinel
16 events, is an expert at police interrogation and
17 appropriate methods. He -- I retained him months
18 ago, but it's taken him a long time to review the
19 case, and it is not done yet, in order to do a full
20 report, and the fact that we're still missing
21 discovery in this case, which I'll get to in a
22 minute, but basically the essence of his testimony
23 will be too critique the handling of this case by the
24 Appleton Police Department, specifically that their
25 interrogation methods that they use of the witnesses

1 in the case are the kind that have been shown by
2 studies to lead to false statements. So I'm putting
3 the State on notice that I do intend to call this
4 expert. I'm not sure exactly when I can get a more
5 full report from him. I will provide the State with
6 his curriculum vitae, I can do that sometime later
7 this week or next week, but I do have a copy of it on
8 my computer, I just forgot to print it out. So
9 that's the next thing.

10 Next, we're still missing discovery in this
11 case, and that's why I want to question Rabas and --
12 Sergeants Rabas and Thao further about this.

13 And I -- I, frankly, do not believe that we have
14 had truthful responses to our inquiries. Now I don't
15 know where the untruthfulness lies, but I intend to
16 show that in court today.

17 THE COURT: Okay.

18 ATTORNEY VISHNY: So are -- and, you know,
19 I'm filing another motion at the conclusion of this
20 testimony, and I'm going to ask for a briefing
21 schedule on suppressing evidence that has been
22 destroyed in this case because I -- I think there is
23 already ample evidence in the record that the
24 destruction -- the destruction was intentional and
25 willful, and I want to elicit a little bit more

1 testimony about this.

2 THE COURT: Is this -- Attorney Vishny, is
3 this a new subject area or is this related to the
4 three interviews which we had talked about, and there
5 may have been reference to a couple other
6 interviews.

7 ATTORNEY VISHNY: Yeah. Not only are there
8 three interviews, we -- you know, we're getting stuff
9 yesterday of a witness that the State interviewed --
10 I mean the police department interviewed on December
11 11th, 2013, and a flimsy reason for why we weren't
12 given this claiming that his name was misfiled under
13 another name. What kind of excuse is that for not
14 turning over a witness that was interviewed almost
15 two years ago?

16 We also believe that there are substantial other
17 witnesses who have been interviewed that have never
18 been provided to the defense. Sergeant Rabas
19 basically as much testified to that when we were in
20 court. He said that there were lots of eyewitnesses
21 for which they've never disclosed. We're questioning
22 now what exists in these interviews based on what's
23 happened.

24 But I do need to elicit some further testimony,
25 and I don't really want to speak to this further.

1 So I don't know what order the court wants to
2 proceed in, if you want us to take the testimony
3 that --

4 THE COURT: Why don't we take testimony
5 first, I'll render the decisions that I need to
6 render, and then we can set further scheduling.

7 ATTORNEY SCHNEIDER: And if the court wants
8 to make notes - because I know your file is probably
9 very large with filings like ours - on the cross of
10 the gang topics, I have my notes that look like May
11 8th there was originally a filing submitted by
12 defense. We responded on June 19th, and then they
13 responded on July 7th. So if that helps the court
14 look for the documents related to that specific
15 issue. I think we've all briefed it already, I feel
16 like we have, we're just waiting for the court to
17 give us some parameters of what's going to be
18 allowed.

19 ATTORNEY VISHNY: I'd like to call Sergeant
20 Rabas then, and I would ask for Sergeant Thao to
21 please step outside.

22 THE COURT: I will grant a sequestration
23 order.

24 And, Sergeant Rabas, if you would please come
25 forward to the witness stand, sir.

1 not given to the defense that were connected with
2 this shooting other than other patrons in the bar?
3 Do you recall saying that?
4 A Yes.
5 Q Okay. And in fact that is not true -- well, the two
6 witnesses at that time were subsequently identified
7 as Jared Randall and Johnny Thao, right?
8 A Correct.
9 Q And in fact it turns out that there are other witness
10 interviews that have not been previously disclosed
11 that we've been given since that time that you swore
12 under oath that there were only two witnesses on May
13 26th, correct?
14 A Yes.
15 Q And that included an interview with Letty Xiong,
16 X-I-O-N-G, correct?
17 A Correct.
18 Q And included an interview with Tim Jacobson, AKA
19 Jaco, J-A-C-O?
20 A Correct.
21 Q And Tim Jacobson was in fact interviewed on December
22 11th, 2013, correct?
23 A Correct.
24 Q And it's your claim that that was never turned over
25 because the report was misfiled under a different

1 name?

2 A Correct.

3 Q How did you discover that it was misfiled and what

4 the name was?

5 A After receiving an e-mail from you -- from District

6 Attorney Carrie Schneider that was actually from you,

7 it was forwarded from you, requesting an interview of

8 Timothy Jacobson, J-A-C-O-B-S-O-N, I believe it is,

9 and after receiving that e-mail, I looked once again

10 through our evidence to see if that interview

11 existed, if it was -- had been placed into evidence

12 and discovered it in a different drive of our

13 computer where we place items for evidence but had

14 actually not been taken out of there and formally

15 placed into evidence.

16 Q Now, you, yourself are the person who had interviewed

17 Tim Jacobson, correct?

18 A Correct.

19 Q And you have a distinct memory of interviewing him,

20 don't you?

21 A I do now, yes.

22 Q So you're saying you just forgot when you testified

23 on May 26th that you had interviewed him?

24 A I didn't recall the -- the interview at that time. I

25 wasn't sure if -- if it coincided with the interview

1 with Johnny Thao and Jared Randall.

2 Q Yet his name had been mentioned in the Thao and
3 Randall reports as somebody who had been involved
4 with them but you just completely forgot that even
5 though you had reviewed the Randall and Johnny Thao
6 reports?

7 A I think the question was if there was a report or a
8 recording of that interview or if that existed, and
9 that -- I answered truthfully at that time saying I
10 didn't believe there was one that existed.

11 Q Now, you had also done an interview with a Letty
12 Xiong which had never been turned over, correct?

13 A This -- there was an interview with Letty Xiong that
14 was turned over, but the one you're referring to, I
15 once again didn't know it existed until I received a
16 recent e-mail.

17 Q Okay. So the contact with Letty Xiong was --
18 actually, you interviewed her, right?

19 A Correct.

20 Q And in fact you wrote this e-mail in the first
21 person, correct, I mean the e-mail, I'm sorry, the
22 report that you recently wrote when you talked about
23 Letty Xiong, this was something done in the first
24 person, correct?

25 A Referring to I interviewed her directly?

1 Q Yes.

2 A Yes.

3 Q And it would be fair to say that this interview with

4 Larry -- Letty Xiong included what could be fairly

5 and reasonably called exculpatory evidence in as much

6 Letty Xiong was questioned about giving Chong Lee a

7 ride from Joe Thor's when she said she hadn't -- she

8 had not seen him, correct, in connection with the

9 Luna shooting?

10 A I don't believe -- no, I don't believe so. I don't

11 believe that is correct at all.

12 Q Well, Letty Xiong, when you interviewed her, you

13 asked her on the date of this interview, on December

14 12th, 2013 -- first of all, that's the same day Chong

15 Lee was arrested, right?

16 A Right. In fact this interview took place like an

17 hour before he was taken into custody.

18 Q Okay. But it took place after being interviewed --

19 after interviewing Paul, right?

20 A Correct.

21 Q And Paul gave information about Letty Xiong having

22 been -- coming and picking Chong up, or he didn't?

23 A Not to me.

24 Q Okay. But you were aware of it?

25 A No.

1 Q Okay. So you claim you were unaware of it, correct?

2 A Not during this first interview. She was
3 interviewed, I believe, like two or three days later
4 when I questioned her in great detail about that,
5 which you already have.

6 Q But on December 12th when you (sic) were interviewed
7 you wrote in your report, you asked Letty if she
8 talked to Chong and she said she hadn't, right?

9 A Correct.

10 Q And that clearly can't be characterized as anything
11 other than exculpatory evidence, can it?

12 ATTORNEY SCHNEIDER: I think I'm going to
13 object to that. I mean, it's an officer. And
14 defense and prosecution often have debates over
15 what's exculpatory or not, so, I mean, is it related
16 to the case, how did he view it, I don't mind those
17 types of questions, but ask him if he views it as
18 exculpatory or not is irrelevant because she may view
19 it as one way, you may view it different, and I'll
20 review it a third way.

21 ATTORNEY VISHNY: That's fine. I'll
22 rephrase the question.

23 THE COURT: Please do.

24 Q (BY ATTORNEY VISHNY) You knew her statement was not
25 identical to a statement she gave later, correct?

1 A This was the first interview. How would I know it's
2 not identical to an interview that takes place later?
3 Q Did you review it, the one that took place later?
4 A Prior to when? I'm not sure what --
5 Q Okay. She was interviewed by you on December 12th.
6 Who interviewed her the second time around?
7 A I did.
8 Q So you interviewed her within a few days of each
9 other, right?
10 A Correct.
11 Q And you knew that she was telling you something
12 different in the second interview than she told you
13 in the first, right?
14 A I don't -- I didn't -- during the first interview --
15 because the first interview primarily we were about
16 to serve a search warrant and take Chong into
17 custody, so the purpose of that first interview was
18 to determine whether Chong was in the house and if
19 she had recent contact with him, if she could verify
20 he was in the house. The -- Letty had just left
21 Chong. She was staying with Chong at the residence.
22 She was observed -- we had surveillance on the house.
23 She was observed leaving the house and a traffic stop
24 was conducted. We had a SWAT team prepared to do a
25 search warrant at the house, so after she left the

1 residence, she was stopped.

2 Q Okay. Maybe you misunderstood my question.

3 A And the purpose of it was to find out whether Chong
4 was in the house. So the questions as to whether she
5 had talked to Chong or saw Chong was in reference to
6 officer safety concerns prior to executing a search
7 warrant on a person we wanted for a homicide.

8 Q Well, that was part of it, but she also asked you if
9 Chong had done something wrong and you explained that
10 you thought he had done something wrong, correct?

11 A Correct.

12 Q And you also asked if she had talked to Chong and she
13 said she had not, correct?

14 A Correct.

15 Q And you asked her if she had heard who had done the
16 shooting and she said no, correct?

17 A Correct.

18 Q And you told her that what she would tell you would
19 not have to go in a report and that you would keep
20 some information from her confidential. That's what
21 you said to her during this traffic stop, correct?

22 A Correct.

23 Q And then she said, you know who they are, and you
24 responded by saying, ACK, correct?

25 A Correct.

1 Q So that certainly went beyond the scope of safety for
2 conducting a search warrant, didn't it?

3 A I guess I wanted -- the questioning also was to see
4 what knowledge she had in reference to the shooting
5 that took place at Luna.

6 Q Okay. And you were aware when you interviewed her a
7 few days later that you had some different responses,
8 correct?

9 A Correct. She provided more information at a later
10 date because I also had more information at that
11 point.

12 Q And nonetheless, it was chosen to not disclose the
13 report and the recording, if it exists, of this
14 earlier statement, correct?

15 A You say chosen. The recording was placed into --
16 it's a -- our J-drive where -- and it's -- it's where
17 we place recordings that we want to have placed into
18 evidence.

19 Q Okay. So you made a choice to not place her earlier
20 statement into evidence, right?

21 A No. I placed it into that drive, I just failed to
22 complete what we call a BEAST entry so that it would
23 have been taken out of that drive and placed into
24 evidence.

25 Q Why did you fail to complete a BEAST entry?

1 A Because we were conducting an investigation, and we
2 conducted a number of interviews, and it was an
3 interview that was placed in there, but one step of
4 the process of having it taken out of there and
5 placed into evidence was a mistake on my part.

6 Q Okay.

7 THE COURT: Let me just stop.

8 Explain to me, Sergeant, when you -- when you do
9 an interview, what is your normal protocol in terms
10 of -- I understand it was recorded, correct?

11 THE WITNESS: Correct.

12 THE COURT: What would be your normal steps
13 thereafter? Because it sounds as if a step was not
14 completed, and I want to know what the normal steps
15 are, and then that may lead me to ask why it wasn't
16 done in this case. But what are the normal steps?
17 Explain this to me.

18 THE WITNESS: Normal steps as far as if
19 it's going to be placed into evidence?

20 THE COURT: Well, you --

21 THE WITNESS: Not all our recordings are
22 placed into evidence.

23 THE COURT: Okay. So you have this first
24 interview with Letty Xiong, correct?

25 THE WITNESS: Letty Xiong.

1 THE COURT: Letty Xiong. You ask Letty
2 various questions, Attorney Vishny has eluded to some
3 of them. Afterwards, you now have a recorded
4 conversation.

5 THE WITNESS: Correct.

6 THE COURT: At that point, what is your
7 next step?

8 THE WITNESS: That conversation is recorded
9 on a handheld digital recorder. We take that
10 recording, we plug it into our computer, and there
11 are several drives that you can place it in. One of
12 the drives is the J-drive under officer's digital
13 narratives, and each individual has their own file
14 for that. After it's placed into that, you go to
15 what we call the BEAST. It's our evidence computer.
16 Once it's placed into the officer digital narrative
17 file, the evidence technicians have access to it.
18 Prior to that, if you place it on your H-drive or
19 another location for you to review or to listen to,
20 they would not have it. So once it's placed in the
21 J-drive under your officer digital narrative file,
22 they then have access to it, but we have to notify
23 them that it's there and what case we want it placed
24 into a secure evidence -- digital evidence file. So
25 we would fill out what we call a BEAST label or an

1 entry into evidence documenting that this is some
2 evidence we want saved. Once the ID techs receive
3 that, then they go in, and sometimes they remove the
4 entire file, sometimes they just move a copy or leave
5 a copy in the J-drive, my file, as well as then place
6 a copy into the evidence file associated with that
7 case. So in my officer digital narrative file in the
8 J-drive I have hundreds of recordings from over the
9 years associated with numerous cases in that file.
10 With this Letty Xiong case, it was just labeled as
11 Letty Xiong and it didn't have the offense report
12 associated with it and there was not an evidence or
13 BEAST label completed for this digital audio
14 recording, and I didn't even know it existed -- I
15 knew I had done an interview with Letty Xiong prior
16 to the search warrant and taking Chong into custody;
17 however, I -- I wasn't sure I saved the recording
18 because in my view there wasn't much evidentiary
19 information, it was more for officer safety concerns
20 that this was recorded, so it wasn't until I received
21 an e-mail and again looked into the evidence file of
22 items that were placed into the file associated with
23 this particular case, and then I also went into the
24 J-drive under my officer digital interviews and
25 looked through thousands or hundreds of recordings

1 and saw a recording labeled Letty Xiong and
2 discovered this recording that she's referring to
3 now. So there was no intention to not enter this
4 into evidence, it was a mistake on my part
5 considering everything that was going on during that
6 part of the investigation - I believe we worked,
7 literally, I think, over 26 or 28 hours straight -
8 that I failed to do a BEAST entry so that that
9 recording would have been entered into the file
10 associated with this case.

11 THE COURT: Now normally when you -- if I
12 understand correctly, you have the digital recording,
13 you transfer it to the J-drive. Is there a normal
14 practice in terms of how quickly thereafter you would
15 create a label and have it put on to -- I think you
16 referred to it as the BEAST drive, is that
17 contemporaneous, is it days later, is there a general
18 rule on how that takes place?

19 THE WITNESS: No. It's -- obviously you
20 try to do it as soon as -- as soon as you make that
21 transfer so you don't forget to do it. Just like any
22 other case, you try to do it at the same time.
23 Sometimes you'll -- you'll work a case and you'll
24 have numerous recordings and then you'll put all the
25 recordings into evidence at one time. So it -- it

1 varies on the type of case you're working on, your
2 availability to do it, a lot of different
3 circumstances. Ideally, yeah, as soon as you place
4 it into the J-drive you should complete the BEAST
5 label so that what happens in this case doesn't take
6 place.

7 THE COURT: Thank you for that
8 clarification for me.

9 Attorney Vishny, go ahead.

10 ATTORNEY VISHNY: Thank you.

11 Q (BY ATTORNEY VISHNY) All right.

12 Moving on from Letty Xiong, there are quite a
13 few witnesses in the bar who were interviewed, and
14 their interviews have never been provided to the
15 defense, correct?

16 A Correct.

17 Q Why haven't they been provided as part of this
18 investigation?

19 A The -- the interviews that were of the patrons in the
20 bar that we felt were significant or related or had
21 information, direct information as far as witnesses
22 or so forth have been provided to you. There is
23 approximately 200 people in the bar. We did a
24 screening process of trying to determine of those 200
25 people which individuals may or may not have

1 knowledge of what took place, either saw something,
2 heard something, those types of things. So we
3 documented everybody who was in the bar in case we
4 would need to follow up or had obtained additional
5 information and just to identify everybody that was
6 possibly there. So the -- the individuals who were
7 in the bar has also been provided to you, and some of
8 those individuals, or most of those individuals were
9 talked to at one point during the night by an
10 officer, or possibly an investigator; however, they
11 were screened out to say that their information
12 wasn't relevant so there was no report done in
13 reference to that.

14 Q Okay. So let me just ask this. In the discovery
15 that you provided in the file that we received, most
16 of these people have signs on them that say, like, no
17 or no information, correct?

18 A Correct.

19 Q But there are six witnesses who have other signs on
20 them indicating some follow up who we've never been
21 provided in discovery; isn't that accurate?

22 A You identified six individuals --

23 Q Correct.

24 A -- that you feel -- and as far as I know, there was
25 no report, or there is -- as far as I know right now

1 as of today there is no report or no recording
2 documenting their interviews or what information
3 those interviews may have had.

4 Q Have you refreshed your memory lately by looking at
5 all of the witnesses to see whether there are reports
6 for each and every one of them?

7 A Yes.

8 Q Or recordings?

9 A Yes. After receiving your e-mail, I ran -- we --
10 because it's in a Word document, I'm able to run
11 their names through the entire 389 page report, and
12 none of their names you provided appeared in the
13 report at any point. In fact, one of the names I
14 believe you had wrong, Danny Daivong you had, it's
15 actually Danny Saivong with an S. instead of a D.
16 Their names do not appear in the report. Also, after
17 receiving that, for the first time I actually looked
18 at each of the photos. Lieutenant Gostisha was
19 assigned to kind of look through those paper
20 documents each individual had to determine as to what
21 ones need to be followed up with further interviews,
22 but after receiving your e-mail, the first time I
23 actually looked through all those photos of every
24 patron that was there. The three -- I think there
25 was 389 photos. Is -- so I did refresh my memory in

1 that fashion.

2 Q Is there a recording of Danny Saivong, S-A-I-V-O-N-G,
3 who is on Page 119 of that pdf file? You just said
4 there was no report. Is there a recording of his
5 interview?

6 A No.

7 Q Is there a recording of Chris Petrick, P-E-T-R-I-C-K,
8 who is on Page 248 of that file?

9 A No.

10 Q Is there a report on Chris Petrick?

11 A No.

12 Q Is there a report on Erica Geiser, G-E-I-S-E-R, who
13 is on Page 295 of that file?

14 A No.

15 Q Is there a report -- and is there a recording of
16 Erica Geiser?

17 A No.

18 Q Is there a report of Tracy Tennessen,
19 T-E-N-N-E-S-S-E-N, who is on Page 328 of that file?

20 A No.

21 Q And is there a recording?

22 A No.

23 Q Is there a report on Gina Seehawer, S-E-E-H-A-W-E-R,
24 who is on Page 366?

25 A No.

1 Q Is there a recording?

2 A No.

3 Q Is there a report on Jose Gonzales Rios, R-I-O-S, who

4 is on Page 91?

5 A No.

6 Q And is there a recording?

7 A No.

8 Q And you've recently investigated all of these to make

9 sure that that's correct?

10 A Yes.

11 Q Okay. Were they interviewed?

12 A Yes. I mean, you say interviewed. And all I -- I

13 can say with certainty that an officer talked to them

14 because they had a right to tell them -- to instruct

15 them to write their names, and, obviously, whether

16 they were -- did they see something or something, so

17 they were part of the screening process. Now, which

18 officer or whether an investigator formally sat down

19 and did an interview with them, I don't -- I don't

20 know that. I can tell you there is no recording or

21 no documentation of that.

22 Q Could there have been a recording that was

23 destroyed?

24 A Very possible, yes.

25 Q How would you be able to access that information?

1 A I cannot.

2 Q Okay. Now, going back to the fact that you testified
3 in court that there had only been two witnesses but
4 tapes not given to the defense, in addition to
5 Timothy Jacobson and Letty Xiong, actually, it turned
6 out that there was an interview of a guy named Adam
7 Richardson, right, that was recorded?

8 A Was that an interview I did?

9 Q Do you have Page 135 please? Well, you put
10 together -- you assisted with putting together the
11 tapes of Johnny Thao and Jared Randall, correct?
12 When we finally got those recordings and the reports,
13 you're the person who put the recordings onto disk or
14 somehow transmitted them, right?

15 A No. I mean, I -- no, I did not.

16 Q Okay. Somebody else did; is that what you're
17 saying?

18 A Yes, probably our D-techs who have been preparing all
19 the reports for you.

20 Q Okay. Were you aware that there was a recording
21 provided with Jared Randall and Johnny Thao of Adam
22 Richardson? Were you aware of that?

23 A You have to refresh my memory who Adam Richardson
24 is.

25 ATTORNEY SCHNEIDER: Just one second.

1 Q (BY ATTORNEY VISHNY) So Adam Richardson is somebody
2 who was interviewed regarding -- on Page 135 of the
3 Bates stamped discovery who was interviewed by
4 Sergeant Meyer. Does that help refresh your memory
5 at all?

6 A No, it doesn't, because I -- I don't recall what his
7 role is or if that was a recording that was located
8 or I'm not sure the circumstances of that recording
9 or report.

10 Q Well, it was turned over, the recording, between May
11 26th and June 18th to the defense. Did you cause
12 that -- whether you actually physically downloaded
13 it, did you actually cause that to be turned over?

14 A Well, as the assigned now lead investigator, yes,
15 I've been tasked to make sure that you have
16 everything that we have.

17 Q So the answer is yes, as the assigned investigator,
18 your answer is yes, you caused that to be turned over
19 to the defense, right?

20 A Yes.

21 Q Okay. Now, what about Kou, K-O-U, Lo, is there a
22 recording or report on him?

23 A Can you refresh my memory with who Kou Lo is?

24 Q Sure.

25 A Or what the circumstances where he may have been

1 interviewed?

2 Q Well, Jared Randall, who was interviewed way back
3 when but just turned over to us recently --

4 ATTORNEY SCHNEIDER: Judge, when she asks
5 this question, she's looking at a copy I provided to
6 her. I don't have another copy that I can refer to
7 as she's asking this question. Can we just make
8 another copy of this so we both have one?

9 THE COURT: Sure. That's fine. We'll take
10 a couple minute break.

11 ATTORNEY VISHNY: I'm just going to -- I've
12 got like one question. I'm not going to put it as an
13 exhibit.

14 Q (BY ATTORNEY VISHNY) In the Jared Randall report, he
15 advised -- Mr. Randall was asked if anyone else knows
16 who did the shooting, and Jared Randall said Kou Lo
17 was in the bar when it happened and knew. Does that
18 help refresh your recollection?

19 A Yeah. I don't recall -- I don't know if Kou Lo or
20 Lor was ever formally identified or interviewed. I
21 guess my answer to that is I don't know.

22 Q Okay. So -- but on December 11th when you
23 interviewed Jared Randall -- and you're the one who
24 wrote the report, right?

25 A Correct.

1 Q So you're saying you just don't know if this was
2 followed up on, correct?

3 A Correct.

4 Q All right. And what about John -- John Nielson,
5 N-I-E-L-S-O-N? Do you recall that at all?

6 A I do not.

7 Q He all -- do you recall Jared telling you that John
8 Nielson may have also heard the shooting or whether
9 that was followed up on or not?

10 A If I documented in that report I remember him saying
11 that, but I don't remember if a follow-up interview
12 was done with John or not.

13 Q Okay. Now, one of the witnesses we asked you about
14 was Noah Vang, correct?

15 A Correct.

16 Q And you say that Noah Vang was never interviewed,
17 correct?

18 A Not in reference to this investigation.

19 Q Okay. On the white board there is a list of every
20 witness who was interviewed, correct?

21 A No. The -- I think it was a list of everybody that
22 we were able to identify that was in the bar.

23 Q Actually, there is a specific list of people who were
24 thought to be somehow involved in this case and
25 whether or not these people had been interviewed,

1 correct?

2 ATTORNEY SCHNEIDER: I think I'm going to
3 object. That calls for speculation. She's referring
4 to notes on a board. She might want to just show the
5 officer the notes and he can explain if he remembers
6 what --

7 ATTORNEY VISHNY: I'm preparing to do
8 that.

9 THE COURT: Very good. I'll sustain it on
10 foundation.

11 Q (BY ATTORNEY VISHNY) I'm showing you what's been
12 marked as Exhibit No. 1. This is a list of people on
13 a white board who were thought to have some
14 information or connection with this case who were
15 interviewed, correct?

16 A Correct.

17 Q All right. And one of the people's names -- there is
18 a list of people under the word interviewed, right?

19 A Correct.

20 Q And there is check marks by each of those names
21 indicating they were interviewed.

22 A Correct.

23 Q One of those names is Noah Vang, V-A-N-G.

24 A Correct.

25 Q And there is a check mark indicating he was

1 interviewed, right?

2 A I'm thinking as to --

3 Q I'm just asking you about the exhibit.

4 A I'm trying to think if the significance of the check

5 mark is that they were interviewed, but there is a

6 check mark next to his name, yes.

7 Q Not only is there a check mark, there's a number next

8 to his name, 9202.

9 A Correct.

10 Q And that is a number that goes with an officer in the

11 Appleton Police Department, isn't it?

12 A Correct.

13 Q Who is 9202?

14 A I believe that's Sergeant Chad Probst.

15 Q Okay.

16 ATTORNEY VISHNY: I'd move Exhibit 1 into

17 evidence.

18 THE COURT: Any objection?

19 ATTORNEY SCHNEIDER: No.

20 THE COURT: Exhibit 1 shall be received.

21 Q (BY ATTORNEY VISHNY) So, according to that document,

22 Sergeant Chad Probst would have interviewed Noah

23 Vang, right?

24 A The -- I want to answer this correctly. So the -- if

25 you're saying -- if you refer to that document in the

1 way you presented it and you want to interpret it,
2 that's what it would say, but I don't believe that's
3 what took place.

4 Q Well each of the other names that was checked on that
5 document have been interviewed, correct?

6 A Correct.

7 Q All right. Now, I'm going to ask you some questions
8 now about the destroyed recordings for Ryan Thao,
9 Mikey Thao and Watou Lee, correct -- I mean, not
10 correct, I'm letting you know that. Sorry. I'm
11 getting a little carried away here.

12 Now, when you testified on May 26th, you said
13 that these recordings were destroyed because these
14 witnesses didn't want their identities disclosed,
15 right?

16 A Yes.

17 Q And that you and other members of the Appleton Police
18 Department didn't want to disclose their identities
19 to the defense and that they were only now
20 reinterviewed because you discovered that they had
21 been inadvertently turned over on the white board,
22 correct?

23 A Correct.

24 Q But in fact Johnny Thao and Jared Randall had also
25 asked to not have their identities disclosed but

1 those recordings weren't destroyed, right?

2 A Correct.

3 Q So why were these three destroyed but not the reports

4 of Johnny Thao and Jared Randall?

5 A I'm assuming it's because different officers were

6 involved with the recordings.

7 Q Well, actually, it was a group decision to destroy

8 these recordings, wasn't it?

9 A Correct.

10 Q I mean, according to the testimony, there was a

11 meeting between the various investigators involved in

12 this case and a deliberate decision was made eight

13 months after these interviews to destroy these

14 recordings.

15 A Correct.

16 Q So it's not just a random decision made by one

17 particular interviewer to destroy the recordings,

18 right?

19 A Well, no, because the process, and I think I kind of

20 explained that, is each individual officer has a

21 different process. I had the recordings for Jared

22 Randall and Johnny Thao. The -- Sergeant Thao had

23 the recordings for Watou -- the other three

24 individuals.

25 Q But it was still a group decision that was

1 specifically discussed by your team in terms of
2 destroying these recordings, right?

3 A Correct. In fact --

4 Q They specifically discussed so that the defense could
5 not access them, correct?

6 A So we wouldn't violate the Monfils Law and protect
7 witnesses.

8 Q Well, you know that the Monfils Law has to do with
9 open records and that an open, pending case is not
10 subject to an open records request, correct?

11 A Well, we knew -- first, to answer your question, the
12 reason those two recordings were still here was,
13 again, just out of the number of recordings, I didn't
14 believe that they were actually retained until we had
15 a request -- a further request to look for them and
16 they were found. We thought they were not retained.
17 So it was part of the group decision not to have them
18 retained, but they were retained, and they weren't
19 entered into evidence or located until you made that
20 request again.

21 Q Okay. Did you or members of your team consult with
22 any legal counsel regarding what the Monfils Law
23 actually meant or was that something that you just
24 decided on your own?

25 A I -- I think we discussed it and reviewed information

1 and our interpretation of it. I don't know if we
2 consulted with any legal counsel prior to making the
3 decision.

4 Q Okay. And so what you say is because these were
5 inadvertently turned over on the white board, that
6 was the reason for reinterviewing these people,
7 correct?

8 A Correct.

9 Q But when you and Sergeant Thao questioned Paul Lee at
10 Norka, he talked to you about Mikey Thao, didn't
11 he?

12 A I would have to review that interview.

13 Q Okay.

14 ATTORNEY VISHNY: Judge, in your file you
15 have, because of previous motions, the transcript of
16 the Paul Lee interview at Norka.

17 THE COURT: Yes.

18 ATTORNEY VISHNY: I don't know where you
19 have it, but what I'm going to show -- I wasn't
20 really going to have this marked as an exhibit
21 because it's already in the court's file, I'm just
22 going to show Sergeant Rabas the transcript, partial
23 transcript. I'm looking at - I hope we have the same
24 page numbers - Page 16. But if the court wants, when
25 I'm done with this I can have it marked and moved

1 into evidence too if it's easier. Doesn't really
2 make me any difference.

3 THE COURT: Go ahead.

4 Q (BY ATTORNEY VISHNY) I'm showing you an excerpt from
5 the transcript where you and Sergeant Thao
6 interviewed Paul Lee at Norka. You remember doing
7 that, right?

8 A I do.

9 Q And Mikey Thao's name appears in the interview with
10 Paul Lee, correct?

11 Well, just to make this a little bit easier, you
12 -- you and Sergeant Thao were questioning Paul Lee
13 regarding who he was hanging out with at Luna, right?

14 A Correct.

15 Q And he said Mikey Thao as one of those people,
16 right?

17 A He said Mikey and then I verified if it was Mikey
18 Thao.

19 Q Okay. So Mikey Thao's name has come up besides the
20 white board, correct?

21 A Correct.

22 Q Okay. And Mikey Thao's name had also come up because
23 there had been a traffic stop of the vehicle that he,
24 Watou Lee, and I'm not sure if it was Ryan or Johnny
25 Thao, but three of them who had been at the bar

1 together, that was also provided in discovery,
2 correct?

3 A Trying to think, two of the three were in the car,
4 the third person was not.

5 Q Okay. And besides Mikey Thao's name being mentioned,
6 when you interviewed Paul Lee you also asked whether
7 or not Mikey Thao was the shooter in the case, didn't
8 you?

9 A I don't recall.

10 ATTORNEY VISHNY: Okay. Judge, it would be
11 Page 45 on that transcript.

12 THE COURT: And this is the Norka
13 interview, correct?

14 Q (BY ATTORNEY VISHNY) Continuing to another page on
15 the Norka transcript, I'm showing you what's been
16 marked -- it hasn't been marked, but Page 45 you ask
17 specifically, did you talk to anybody that was kind
18 of here, Mikey, did Mikey shoot him? Anything like
19 that? You asked that of Paul, right?

20 A Correct.

21 Q And Paul said no.

22 A Correct.

23 Q So his name came up more in just conjunction of Mikey
24 Thao merely having been present at the bar but asking
25 whether or not Mikey or Paul or someone else was the

1 shooter.

2 A Correct.

3 Q And then a little bit later in the interview, Page

4 56, 57, you asked Paul again about -- Mikey Thao's

5 name came up again and is referenced in Page 56 to 57

6 in the interview, correct? Right?

7 A Correct.

8 Q And again on Page 68, you again asked about Mikey

9 Thao and whether he was the shooter, right?

10 A Correct.

11 Q Now, when you interviewed Joe Thor, Joe Thor also

12 mentioned seeing Mikey Thao at the time of the

13 shooting, correct?

14 A Correct.

15 Q And in fact Mikey Thao's name appeared on Joe Thor's

16 diagram, right?

17 A I'd have to see it to verify that. I don't recall at

18 this time without seeing the diagram.

19 ATTORNEY VISHNY: The State is willing to

20 stipulate that it's mentioned in there. I can't find

21 the document right now, and I don't want to waste a

22 lot of time. I recall pulling it for today.

23 Q (BY ATTORNEY VISHNY) All right. So we have that

24 stipulation so you don't need to answer the question.

25 Now there are also missing recordings for some of

1 the witnesses in Milwaukee who were interviewed,
2 correct?

3 A I don't know. I don't know who you're referring
4 to.

5 Q Well, on a previous occasion several months ago you
6 were asked whether or not there were recordings for
7 the following individuals, number one, Peter Moua,
8 M-O-U-A; number two, Dia Vang, V-A-N-G; number three,
9 Keng Joseph Vang, Keng is spelled K-E-N-G; and number
10 four, Phonesay, P-H-O-N-E-S-A-Y, Saengphachanh. I'm
11 not sure if I'm pronouncing that correctly, but the
12 spelling would be S-A-E-N-G-P-H-A-C-H-A-N-H,
13 otherwise known by the initial Q, and none of those
14 recordings exist or have been provided either. Do
15 you know where they are?

16 A If they're not in evidence or you don't have them,
17 I'm assuming they don't exist.

18 Q Have you looked for those?

19 A Those specific interviews, no.

20 Q Okay. There is also a diagram. You were aware that
21 Delinda Guzman was interviewed twice, correct?

22 A Yes.

23 Q And that she drew diagrams on both occasions,
24 correct?

25 A That I -- I don't know. I wasn't part of either one

1 of the interviews.

2 Q Well, you were present when I came to the Appleton
3 Police Department and asked about a missing diagram
4 from Delinda Guzman, weren't you?

5 A I don't remember if we talked about the diagram or
6 not.

7 Q So you don't recall saying that you looked for it and
8 somehow it had been destroyed or was missing?

9 A I don't recall that, no.

10 Q Now, regarding Mikey Thao, in addition to the fact
11 that his name came up in the interview with Paul at
12 Norka, you also testified in a suppression hearing in
13 open court regarding your interview of Paul Lee,
14 correct? Is that correct?

15 A I'm not sure what the question is.

16 Q Okay. Maybe let me try and be more clear.

17 You testified in court at a suppression hearing
18 at a motion regarding the admissibility of Paul Lee's
19 statement that was filed by the defense, correct?

20 A Correct.

21 Q And so you testified in court in connection with that
22 case on January 27th, 2015, correct?

23 A Correct.

24 Q And during that testimony you were asked who the
25 initial focus was for the Appleton Police Department

1 of potential suspects in this case, correct?

2 A Correct.

3 Q And when you testified in open court, you gave a list
4 of names and that list included Mikey Thao. Page 107
5 of the transcript on January 27th, 2015. Would you
6 like to see the transcript to refresh your
7 recollection?

8 A Yes, please.

9 Q Okay.

10 ATTORNEY SCHNEIDER: Just so the court is
11 aware, for today I didn't entirely know the necessary
12 scope of what the questions would be so I sent to the
13 officers the May 26th and June 18th transcripts so
14 he's never, as far as I know, ever reviewed this
15 previous transcript related to Paul Lee.

16 THE COURT: What was the page again,
17 Counsel?

18 ATTORNEY VISHNY: 107.

19 A Yes.

20 Q So Mikey Thao was initially in your suspect list,
21 along with Joe Thor, Phong Lee, Paul Lee, Tommy Lee,
22 Tou Shoua Lee, eventually Chong Lee and Delinda Gomez
23 (sic) and Alyson Blom, of people who may be suspects
24 or in some way connected with this shooting?

25 A I was going to say I wouldn't necessarily classify

1 them all as suspects, just people that we knew that
2 were possibly in the foyer when the incident
3 happened.

4 Q Well, what you said in court was they were an initial
5 focus for the Appleton Police Department, correct?

6 A Correct, because they were in the foyer when the
7 incident happened.

8 Q You also put Mikey Thao in some of your other police
9 reports as well when you wrote about Joe Thor and
10 Paul Lee, correct?

11 A Without reviewing them, I -- I can't say for
12 certain.

13 ATTORNEY SCHNEIDER: I'll stipulate that --
14 I mean, there are different interviews with people
15 that -- the question that I'll probably follow up on
16 is the sequence of them, but I'll stipulate that I
17 don't even know if Watou was ever sent, but some of
18 these three may have been said in a recorded
19 interview with another person, and the officer -- I
20 mean, I'll follow up with questions, but, yeah, they
21 were referenced in other reports or in other
22 statements taken.

23 ATTORNEY VISHNY: Okay. I'm satisfied with
24 that. I can file copies of those reports as
25 attachments later.

1 THE COURT: Okay.

2 ATTORNEY VISHNY: I don't have anything
3 further at this time.

4 ATTORNEY SCHNEIDER: Do you have the photo
5 of the white board in front of you?

6 ATTORNEY VISHNY: That went up by the
7 judge.

8 ATTORNEY SCHNEIDER: That's why I wandered
9 up before.

10 **EXAMINATION**

11 **BY ATTORNEY SCHNEIDER:**

12 Q And I just want to ask, this is a -- a copy of what
13 was the white board at the Appleton Police Department
14 at one point, correct?

15 A Correct.

16 Q And so this is a list of names, Chong Lee, Paul Lee,
17 Phong Lee, Joe Thor, Tom Lee, Tou Shoua Lee, Noah
18 Vang, Michael Thor, Delinda, Alyson, and then below
19 is Alex Schyling, and then in quotes it says white
20 boy.

21 A Correct.

22 Q There are checks by most of them but for Alex
23 Schyling, correct?

24 A Correct.

25 Q But you don't recall if -- at this time if those

1 checks mean those parties at that time had been
2 interviewed or whether they had been assigned to
3 someone to be interviewed?

4 A Correct.

5 Q Okay. And one of those is Noah Vang?

6 A Correct.

7 Q Why don't you explain for us, Alex Schyling was
8 someone you spoke with, correct?

9 A Actually, it was Sergeant Thao who spoke with Alex
10 Schyling.

11 Q And Noah Vang's name came up during that interview
12 with Alex Schyling, correct?

13 A Correct.

14 Q Did you talk to Sergeant Thao about Noah after he
15 spoke about Alex?

16 A Yes.

17 Q What -- if you want to give the context, where did
18 Alex Schyling say he was at the time of the
19 shooting?

20 A He was outside of the bar on College Avenue having a
21 cigarette just outside of Luna on the sidewalk.

22 Q And is it consistent that you found, I would say,
23 given Appleton's smoking ban, that there were a
24 number of people outside the bar at the actual time
25 of the shooting having cigarettes?

1 A Correct.

2 Q Or outside with friends who might have been having
3 cigarettes?

4 A Yes.

5 Q Okay. So some of the people you spoke with or that
6 were spoken to like Alex Schyling couldn't say it was
7 -- and I'm going to say the wrong time, but 11:22
8 when they heard shots, correct?

9 A Correct.

10 Q Did some of them not even hear shots but suddenly saw
11 a mad rush of people exit?

12 A Yes.

13 Q And you, knowing the foyer video, put that at the
14 time of the shooting, correct?

15 A Correct.

16 Q Related to Alex Schyling, where did he say Noah was
17 related to him at the time of the shooting?

18 A He said Noah was with him outside the bar on College
19 Avenue.

20 Q Were you and Sergeant Thao able to confirm that in
21 some way, shape or form?

22 A Yes.

23 Q How did you do that?

24 A Through the video. I know through the foyer video we
25 were able to see people enter and exit Luna, and

1 also, at times when the doors to Luna were open, the
2 -- you could actually see out onto College Avenue
3 sidewalk as well as there was traffic camera from
4 Division and College. So I knew -- I think it was
5 primarily through the Luna video, surveillance video,
6 that we were able to confirm that the time the actual
7 shooting took place is that Tom Lee was not in the
8 foyer -- I'm sorry, Noah Vang was not in the foyer.

9 Q Is it something where as part of this case you
10 watched the sequence of who went in and out for even
11 a time period before the actual time of the
12 shooting?

13 A Yes.

14 Q Is it something based upon clothing Alex Schyling was
15 seen wearing that you were able to identify when he
16 left prior to the time of shooting?

17 A Yes.

18 Q And same then with Noah leaving with him?

19 A Yes.

20 Q And then were you able to actually see them on the
21 video out in the street as well?

22 A I believe so. But I believe -- I believe it was
23 through the camera -- one of the cameras in the
24 foyers that, like I said, when the doors were open
25 you can actually see people out on the sidewalk

1 smoking.

2 Q And sometimes maybe you can only see a portion of the

3 bottom of their clothing or shoes, correct?

4 A Correct.

5 Q After Sergeant Thao spoke to Alex, Alex says Noah was

6 outside with him, is that when you checked the video

7 to confirm that?

8 A Yes.

9 Q Did you then make a decision whether Noah Vang had to

10 be -- there needed to be any follow up with Noah?

11 A It was not a priority at that point based upon that

12 information that we knew he was actually not in the

13 foyer as we were still trying to identify other

14 people that we knew were in the foyer that were

15 listed on that white board.

16 Q Is it possible that whole point was discussed with

17 Officer Probst at some point?

18 A Yes.

19 Q Okay. And based upon recent requests of Attorney

20 Vishny, you went to look to see if Noah was

21 interviewed and that's when you found that kind of

22 sequence which you just discussed?

23 A Correct.

24 ATTORNEY VISHNY: Actually, I'm going to --

25 well, no. Never mind.

1 Q (BY ATTORNEY SCHNEIDER) What I should say is that's
2 when you then specifically put into a report why
3 Alex -- or why Noah wasn't interviewed, what you and
4 Sergeant Thao did related to checking the video
5 related to Noah and Alex, correct?

6 A Correct. I -- I believe, like you said, the
7 assignments, Sergeant Probst was assigned to
8 interview Noah Vang. And the significance of the
9 check mark must have -- could be that after we
10 realized that Noah didn't need to be interviewed, he
11 didn't have to be.

12 ATTORNEY VISHNY: Judge, at this point I'm
13 going to make an objection because I don't think
14 blatantly speculative what could be, what couldn't
15 be, is really admissible. We are supposed to testify
16 about what is and isn't. The document speaks for
17 itself.

18 ATTORNEY SCHNEIDER: Well, but she's asking
19 him to speculate on what the check mark means and he
20 doesn't specifically remember it. Defense says it
21 means X, which we do not know if it means X or does
22 not -- or does mean X.

23 THE COURT: We'll resolve it this way.

24 Do you know what the check mark means? I don't
25 want to know what it could mean. Do you know what

1 the check marks on that white board mean?

2 THE WITNESS: No, I don't.

3 THE COURT: Okay.

4 ATTORNEY SCHNEIDER: Okay.

5 Q (BY ATTORNEY SCHNEIDER) I want to stick with --

6 THE COURT: Actually, let me -- I want to
7 follow up on that.

8 Who would have prepared the information on that
9 white board?

10 THE WITNESS: For the most part, I was
11 writing a lot of the information on the white board,
12 but I can tell you that the -- a lot of the names --
13 the writing of these names under what you're
14 referring to in this photo is not my handwriting, so
15 I'm not sure who specifically wrote the names or
16 officers' badge numbers and the check marks next to
17 it. So I'm not sure who completed that.

18 THE COURT: And you don't know who would
19 have completed that?

20 THE WITNESS: No, I don't.

21 Q (BY ATTORNEY SCHNEIDER) And even -- I'll just ask
22 just to help clarify.

23 You've worked with a number of the same
24 investigators for a long time, sometimes you come to
25 recognize their handwriting?

1 A Correct.

2 Q Looking at that, do you -- could you give us if you
3 even know whose handwriting it might be?

4 A No, I don't.

5 Q Okay. I just thought if you knew it would help us
6 out, but -- okay. I'm going to continue to focus on
7 the bar people before we go back to Letty Xiong and
8 some other issues you were asked about.

9 Just to help assist the court understand, what
10 was done at the scene, you had, I think you said, 389
11 or 384 photos were taken of patrons, correct?

12 A Correct.

13 Q And these were just people who were located in the
14 bar?

15 A Yes.

16 Q Okay. Not actually 380, I'll say nine, even though
17 it might be 84, people, because sometimes photos were
18 taken of a person close up and some further back.

19 A Correct.

20 Q Why were they taken of a person further back?

21 A The -- to show the overall view to the officer, but
22 then oftentimes the writing on the document or the
23 sheet of paper they had was difficult to read from
24 that distance so then a closer photo was taken of the
25 actual paper they were holding.

1 Q Was it -- is it sometimes important to identify
2 because somebody may remember a person wearing cowboy
3 boots or certain color pants or coat and that's why
4 those photos were also taken of all the parties?
5 A Yes.
6 Q And the way the photos were documented and recorded,
7 you know who the person is, correct?
8 A Yes.
9 Q And then you have a photo of what they were wearing
10 at Luna that night.
11 A Correct.
12 Q So anybody could do follow up based upon those
13 factors with any party?
14 A Yes.
15 Q And is it -- and officers did, what you say, somewhat
16 of a screening to determine if people were witnesses
17 or saw things, correct?
18 A Yes.
19 Q It's true that somebody could say they saw nothing
20 when they saw it all, right?
21 A Yes.
22 Q So this was just what officers were able to ask of
23 these parties that night.
24 A Yes.
25 Q Was it a situation where you felt you could hold

1 these - I'm going to estimate there was probably 200
2 people, if we know that some photos were taken of the
3 same person more than once - for hours?

4 A No. I mean, we -- this was bar closing time. There
5 was 200 people in a bar that didn't want to be there
6 any longer. And we tried to expedite the process.
7 We actually had to call extra officers in because the
8 crowd was becoming unruly based upon the short term
9 we were detaining them.

10 Q And some people were drunk because they were out at a
11 bar, right, and that added to their agitation?

12 A Yes.

13 Q But you took steps to record name and a photograph of
14 anybody -- when officers arrived, they kind of
15 locked -- I don't want to say they locked the front
16 doors, but they didn't allow anymore people to leave,
17 right?

18 A Correct.

19 Q Did the -- so defense has asked you questions about
20 Watou, Mikey Thao, I think Ryan Thao?

21 A Yes.

22 Q Okay. That they were parties at one point who - and
23 Johnny Thao and Jared Randall might be in that same
24 group - gave information but were concerned about
25 their identities being revealed, correct?

1 A Correct.

2 Q And we've had previous testimony about this, but just
3 to help the court understand, at the time those
4 parties were spoken to, prior to that was Paul Lee
5 interviewed?

6 A I'm trying to think of the sequence of events. I
7 would have to look at the report as far as the timing
8 of it.

9 Q Okay.

10 A Maybe you have that and can refresh my memory, but I
11 don't recall specifically a timing of that.

12 Q Okay. And it's -- it's a situation, Officer, where
13 the day this happened, and the next three or four
14 days, multiple officers were interviewing different
15 parties at the same time, correct?

16 A Absolutely.

17 Q So Sergeant Tauber and Sergeant Meyer could be
18 interviewing somebody who is talking about Mikey Thao
19 at the same time you're talking to Mikey Thao,
20 correct?

21 A Correct.

22 Q And you're not able to communicate directly
23 immediately, hey, this person said A and then you
24 know that when you're interviewing Mikey Thao,
25 correct?

1 A Correct.

2 Q At some point, though, there is parties who don't
3 want to be identified, they're concerned for their
4 safety, correct?

5 A Yes.

6 Q And we had previous testimony about them, but a
7 majority, or at least I believe three of them,
8 identified in some way, shape or form, whether it be
9 clothing or by name, Chong as the shooter, correct?

10 A Yes.

11 ATTORNEY VISHNY: Objection.

12 ATTORNEY SCHNEIDER: Maybe I can rephrase
13 it.

14 ATTORNEY VISHNY: That is not an accurate
15 representation of what is in these interviews. There
16 is actually not one person who says they saw Chong
17 Lee do this shooting. Not one single interview,
18 except for Paul, but virtually every witness says
19 they didn't actually see the shooting. I can't
20 recall anybody who said they actually saw it. I do
21 not have it memorized, exactly what Paul Lee said,
22 but they virtually all denied it in one way or
23 another.

24 ATTORNEY SCHNEIDER: Well, maybe I can
25 rephrase, but I think --

1 THE COURT: Please withdraw the question
2 and rephrase.

3 Q (BY ATTORNEY SCHNEIDER) In your opinion do the three
4 parties who didn't want to be identified who were
5 concerned for their safety, in your opinion, talking
6 to them, did they somehow involve or implicate
7 Chong?

8 A Yes.

9 Q Okay. Now, it's a situation where when you're
10 talking to Paul Lee you may have said the name Mikey
11 Thao, correct?

12 A Yes.

13 Q But at the time did you know that Mikey Thao had
14 information and didn't want to be identified?

15 A I don't -- I don't believe so. I think we just knew
16 that Mikey Thao was in the foyer at that point.

17 Q And in other interviews with Joe Thor or other
18 parties, you might have used these names, Mikey Thao
19 or Ryan or Watou or -- correct?

20 A Correct.

21 Q Or those people might have said those names to you,
22 correct?

23 A Correct.

24 Q Do you think some of those predated when you spoke to
25 those three people and they said we'll tell you what

1 we know but we don't want to be identified?

2 A Correct. In fact, I wasn't even part of the initial
3 interviews with Mikey Thao or Ryan Thao. Like I
4 said, this was an ever evolving investigation in
5 which, like you said, different officers were
6 speaking with different people and at simultaneous
7 times all the way from Milwaukee up to Green Bay, so
8 there was, you know, obviously information that we
9 wanted to interview Paul and had identified a number
10 of individuals in there, but the specifics of what
11 each person said, you know, at that point was not
12 necessarily always shared with the investigative
13 group. It might have been that the individual was
14 talked to or wasn't talked to, but I -- I was not
15 part -- so I didn't have direct knowledge as to what
16 Mikey or Ryan or Watou had said during their initial
17 interviews.

18 Q So let me ask you this. Even after they were
19 interviewed and you went and spoke to another witness
20 and they mentioned the name Watou or Mikey or Ryan,
21 would it be a subject where you said, oh, no, we
22 can't talk about those people, or would you let them
23 talk about those people?

24 A We would let them talk about them.

25 Q So even when there was a decision about the parties

1 who asked -- they didn't want to be identified but
2 they told you what they knew, and then there was
3 discussion about what to do with the recordings, the
4 specific interviews or recordings with those people
5 were not initially shared as part of discovery,
6 correct?

7 A Correct.

8 Q And there is a discussion, I'm going to use language
9 defense, and I think you said earlier, there was a
10 discussion Appleton Police Department had about the
11 Monfils Law and these people requesting their
12 identities not be disclosed, correct?

13 A Correct.

14 Q But it wasn't that the department made or an
15 investigator made a decision, well, we better go back
16 through every other interview or every other
17 recording and make sure we blank out their name if
18 it's a recording or delete it out of the report,
19 correct?

20 A Correct.

21 Q So you didn't -- while you protected those specific
22 interviews and statements they gave, you didn't go
23 back to say, well, we better blank out or X out their
24 name throughout the report to hide their identities
25 in some other way?

1 A Correct.

2 Q And you're aware -- I don't -- how long have you been
3 an investigator?

4 A 26 -- well, 26 years with the police department,
5 probably 16 of those as an investigator.

6 Q I should know this. Based upon your years with APD,
7 you're aware when you list a name in a report it
8 means defense or someone else may go talk to that
9 person, correct?

10 A Absolutely.

11 Q You've had that experience in other cases?

12 A Yes.

13 Q So it wasn't that there was ever a decision by anyone
14 or a discussion, well, we need to go through every
15 report, every photograph, every recording and make
16 sure we X out the names of these parties.

17 A Correct.

18 Q And as far as you've been able to ascertain about the
19 six names defense counsel provided last week, these
20 were people who were at the bar, we had their photo,
21 we had their picture, but there is no reports and no
22 interviews or recording?

23 A Correct.

24 Q And just to give some explanation, the white board
25 had a series of photos put on it initially, right?

1 A Yes.

2 Q And there was a series of parties that officers were
3 attempting to identify who the people were, correct?

4 A Correct.

5 Q For example, initially you might have just identified
6 somebody, okay, that's the guy in the white hat.
7 Does anyone know who the guy in the white hat is?

8 A Correct. We actually assigned them numbers.

9 Q Okay.

10 A It was a numbering sequence. And then we went to try
11 to make sure we could -- you know, once we knew No. 8
12 was so and so, then we would say, okay, eight is this
13 person, and then we went through that trying to
14 identify each person.

15 Q And use of the Luna video assisted in some way,
16 correct?

17 A Yes.

18 Q Because there was also video of the bar area,
19 correct?

20 A Yes.

21 Q So you could see -- I think there was one gentleman
22 who bought some beers right before the time of the
23 shooting, you can see him do that, and then you can
24 see him exit after the shooting?

25 A Correct.

1 Q So the white board photos were people you were trying
2 to identify?

3 A Yes. It was all snapshots or still photos, you know,
4 a pause of the surveillance video, we would take a
5 screen shot, and then, you know, from that screen
6 shot try to identify each of the individuals in that
7 area.

8 Q Okay. I want to talk and just have you explain a
9 little bit more about the initial time you spoke with
10 Letty Xiong on December 12th, 2013. SWAT was outside
11 of the residence you believe to be Chong's residence
12 waiting to execute a search warrant?

13 A Yes.

14 Q Is it practice where in a situation such as this
15 officers go prior to watch the residence and see if
16 anybody leaves or how many people are coming and
17 going?

18 A Yes.

19 Q Is that pretty common?

20 A Yeah. It's called overwatch. We normally do that,
21 at least for extended period of time, prior to
22 executing the search warrant, typically an hour,
23 depending on circumstances.

24 Q Sometimes are you waiting for the actual warrant to
25 get drafted, presented to a judge and signed?

1 A Then -- that and then especially this one was with a
2 SWAT team, so we have to brief the SWAT team we used.
3 Because it was in Neenah, we used a Neenah SWAT team,
4 we had to meet with them and so forth. In the
5 meantime we continued to gather intelligence as to
6 who may be in the residence or what may be
7 happening.

8 Q And then during the course of that is when a vehicle
9 left, the vehicle was ultimately stopped, and that
10 was determined to be a vehicle that was being driven
11 by Letty Xiong?

12 A Correct.

13 Q And I don't know if we even identified. Letty is a
14 female, right?

15 A Correct.

16 Q And she was stopped, you traveled to the location
17 where she was stopped?

18 A I was actually on my way to Neenah. I don't recall
19 where I was coming from, but I was actually on my way
20 to Neenah when, you know, I could hear the radio talk
21 about that, and they discussed stopping the vehicle
22 and if there was any additional officers in the area.
23 So I assisted when Sergeant Holdorf stopped the
24 vehicle, I was really -- actually pulled up right
25 behind him as the stop occurred and then took over

1 the interview process.

2 Q At that point do you recall if the name Letty Xiong
3 had been identified in any way, shape or form as part
4 of the investigation?

5 A No, I don't believe it was.

6 Q What were some of the concerns you had when you
7 wanted to speak to Letty Xiong?

8 A At this point we had a search warrant and arrest
9 warrant for Chong, and obviously we were looking for
10 a handgun, so my main concern was the officer safety
11 concern as far as the execution of the search warrant
12 that we were prepared to do, so I wanted to obtain
13 inside information as to whether Chong was there. I
14 asked Letty about any guns, if she ever saw Chong
15 with guns. So the main purpose was to try to
16 determine from Letty, who had just left the
17 residence, how many people were in the house, whether
18 there was any animals in the house, what type of
19 animals, were there any weapons in the house, those
20 type of -- of circumstances.

21 Q Is that questions you've asked of other people who
22 have left the scene where a search warrant was going
23 to be executed?

24 ATTORNEY VISHNY: Objection. Relevancy.

25 THE COURT: Sustained.

1 Q (BY ATTORNEY SCHNEIDER) Do you -- how long do you
2 think your contact with Letty was?
3 A She was on her way to work and she was running late.
4 It was a relatively short interview. I'd have to
5 look at the time of the recorded interview, probably
6 five minutes, five to ten minutes, ten minutes at the
7 most. I can't even imagine it was that long.
8 Q During this encounter with her, even though it was
9 brief, did she tell you how long she had been staying
10 at the residence?
11 A Yes.
12 Q And how long was that?
13 A She -- she had moved in just a couple of days prior,
14 I believe it was like a Saturday, so I think it was
15 three -- three, four days prior to the interview.
16 Q Okay. And did you have concerns when you spoke with
17 her about whether you needed to -- let me ask you
18 this. During the time you spoke with her, were you
19 aware if she had a cell phone?
20 A Yes.
21 Q Were you aware where she was planning to go?
22 A Yes.
23 Q Where was that?
24 A To work at McDonalds.
25 Q Did you have any concerns prior to the warrant

1 actually being able to be executed or being
2 finished?

3 ATTORNEY VISHNY: I'm going to object to
4 relevancy. I mean, I think the issue is whether he
5 questioned her about witnesses or not and it wasn't
6 turned over, not -- he's already testified that he
7 had safety concerns. That's not being challenged by
8 the defense, and so I -- I just don't see the further
9 relevance.

10 ATTORNEY SCHNEIDER: She asked a lot of
11 questions about isn't it true you asked her about
12 Chong and seeing Chong do the shooting and commit the
13 shooting, so I think I'm able to ask and identify
14 some of the questions and why he asked them.

15 THE COURT: I'll give some latitude.

16 Q (BY ATTORNEY SCHNEIDER) You knew where she was going
17 to?

18 A Yes.

19 Q Did you have concerns about her possibly sharing that
20 information with others if you just allowed her to
21 leave?

22 A Yes, I did.

23 Q Okay. In that regard, did you ask more specifics
24 about her contact with Chong or her relationship or
25 how long she knew even his siblings and family or his

1 mother?

2 A Yes, I did.

3 Q And did you specifically in that talk ask her if she

4 would not communicate what was going to happen at the

5 house with anyone?

6 A Yes.

7 Q Did you decide to keep her, I'm going to say, with a

8 police officer until the warrant was finished or did

9 you allow her to go to work?

10 A I allowed her to go to work.

11 Q And at the time when you were speaking to her

12 briefly, did she indicate to you she knew anything

13 about the Luna shooting?

14 A No. She said she heard about it on the news.

15 Q And your previous testimony is that you put that

16 recording in the J-drive but, in essence, forgot to

17 send the request to evidence or the notice to say,

18 it's there, put it into the BEAST?

19 A Correct.

20 Q And at the time you initially spoke with her, you

21 didn't have any information that she, after the

22 shooting, had interaction with Chong or anything

23 related to a ride or a vehicle ride, correct?

24 A Correct.

25 Q You learned that after you spoke to her the first

1 time?

2 A Correct.

3 Q And then you were able to speak to her a second time

4 and went through that with her?

5 A Yes.

6 Q And then Tim Jacobson, someone you spoke with, did he

7 - because I don't think this has been discussed or

8 disclosed - at the time of the shooting, did he put

9 himself inside Luna or outside Luna?

10 A He was outside.

11 Q Did he have any information directly to witnessing

12 the shooting?

13 A No.

14 Q Did he have any information about himself personally

15 seeing any of the parties that were involved in the

16 shooting?

17 A No.

18 Q He is someone who did provide you information about

19 seeing girls wrestle out on the street around the

20 time of the shooting?

21 A Correct.

22 Q Had that information been provided by others?

23 A Yes.

24 Q And in fact the two girls who were involved in that

25 altercation, those were interviewed, recordings were

1 provided, correct?

2 A Yes.

3 Q And when that name was provided to you last week, you

4 then went and searched and found, I think, as your

5 report indicates, it had been mislabeled as like --

6 the last name was completely mislabeled, correct?

7 A Correct.

8 Q He indicated to you he didn't know anyone in the

9 shooting, doesn't know the victim.

10 A Correct.

11 Q Did Mr. Jacobson indicate to you he had some memory

12 issues?

13 A Yes.

14 Q And even was prescribed medication related to that?

15 A Yes.

16 Q Is it a situation, Sergeant Rabas, in this where

17 there are probably other people who were at the bar

18 or who have mentioned other people that you could

19 follow up with, correct?

20 ATTORNEY VISHNY: Objection.

21 Speculative.

22 ATTORNEY SCHNEIDER: I'm asking --

23 THE COURT: It's overruled.

24 A Yes. I mean, there was other -- well, there's, you

25 know, 150 people that we could have followed up with

1 as far as that were inside of the bar and could have
2 done formal sit-down interviews with each one of them
3 and other names that had -- had come up in reference
4 to this. I mean, probably, you know, hundreds of
5 additional people that we could talk to.

6 Q But at some point you as officers had made a decision
7 about whether you need to follow up or continue to
8 interview people, correct?

9 A Correct.

10 Q And even when you get additional names, if it was
11 tomorrow, you would still then make that assessment,
12 correct?

13 A Correct.

14 Q And you've done that in other cases as well?

15 A Yes.

16 Q But yet you know at least, to the best of the
17 ability, Appleton tried to identify everybody who was
18 at Luna through these photographs and boards with
19 identifying information, correct?

20 A Yes.

21 ATTORNEY VISHNY: Object. Asked and
22 answered.

23 THE COURT: Sustained.

24 ATTORNEY SCHNEIDER: The only -- I don't
25 have any other questions for Sergeant Rabas today,

1 but I'm just going to ask for a little bit of
2 permission because this is a little unique. Often we
3 come in and we have a stop motion so we know the
4 scope is to address the stop and what we're doing
5 there. I knew Attorney Vishny wanted to do follow-up
6 with Sergeant Rabas and Sergeant Thao today, but on
7 what topics I didn't exactly know or where that was
8 going to go. I had them review prior transcripts.
9 She's asked a few things today that I want to just
10 have the ability, if I need to, to recall them. I'm
11 going to ask for that because --

12 ATTORNEY VISHNY: No objection.

13 ATTORNEY SCHNEIDER: Okay. All right.
14 Then I don't have any other questions for Sergeant
15 Rabas.

16 ATTORNEY VISHNY: Brief redirect.

17 **EXAMINATION**

18 **BY ATTORNEY VISHNY:**

19 Q Sergeant Rabas, it's your opinion that Noah Vang
20 wasn't interviewed because he was outside, right, and
21 not inside the bar and therefore wouldn't have been
22 an eyewitness to the shooting, right?

23 A Correct.

24 Q However, Tim Jacobson, Jared Randall, Johnny Thao,
25 John Nielson and Alex Schyling were all known to have

1 been outside the bar and were interviewed, right?

2 A We didn't know that until they were interviewed.

3 Q I see. And -- even though you had studied the tape

4 and looked at who was inside and who was outside?

5 A I -- I didn't know what each of those individuals

6 looked like. I was familiar with Noah Vang, and also

7 Noah Vang did make himself available to us.

8 Q But you had pictures of everyone at the bar, right?

9 A Are you referring to the people that had their signs

10 up?

11 Q No. I'm referring to the various persons of interest

12 who you thought might know the individuals involved

13 and you wanted to interview.

14 A Yes.

15 Q And in fact interviews were conducted of many

16 witnesses in this case who were not necessarily at

17 the bar but who you thought might have information

18 pertinent to the investigation, correct?

19 A Correct.

20 Q Now, did you talk to Sergeant Probst specifically

21 about whether or not he interviewed Noah Vang?

22 Because I noticed when you were being questioned by

23 Miss Schneider you said, well, he probably didn't

24 interview him. Did you interview him before today to

25 find out whether he talked to Noah Vang?

1 A Yes. After your e-mail request I sent out an e-mail
2 to -- we have a group e-mail for all APD
3 investigators, which he's included on that, as well
4 as to our CRU Unit, which also assists with this
5 investigation, and every other officer, including
6 Sergeant Holdorf from the MEG Unit, Officer -- Deputy
7 Wang Lee from the sheriff's department, and the
8 e-mail request was sent out to them and asked them to
9 respond as to whether they interviewed the
10 individuals, not only Noah Vang but the other
11 individuals you had listed in there. I received a
12 response back indicating that they did not talk to
13 him in reference to this case.

14 Q And was that response specifically from Sergeant
15 Probst?

16 A Yes.

17 Q Now, it's your opinion that Ryan Thao, Watou Lee and
18 Mikey Thao somehow implicated Chong Lee in this
19 shooting?

20 A Yes.

21 Q Okay. Well, Ryan Thao, when he was interviewed by
22 you guys in April, he made it clear that at the time
23 of the shooting he didn't know who Chong Lee was,
24 correct?

25 A Correct.

1 Q And nobody had ever shown him any photographs of
2 Chong Lee back when his memory would have been fresh,
3 correct?
4 A There -- are you talking about the first interview?
5 Q Yup.
6 A I wasn't part of that first interview.
7 Q I understand that, but didn't you discuss it with
8 Sergeant Thao before you went out and did the
9 reinterview with Sergeant Thao?
10 A We discussed the interview. I don't -- I don't know
11 if we specifically discussed as to whether he
12 presented photographs or not.
13 Q And in your interview with Ryan Thao, the first
14 person who mentioned the name Chong Lee wasn't Ryan
15 Thao, it was actually you or Sergeant Thao, correct?
16 A Yeah. At that point Chong Lee has already been
17 formally charged.
18 Q Correct. And what Ryan Thao told you is that he
19 didn't know Chong and he was never asked in this
20 interview to give a physical description of what
21 Chong looked like, correct?
22 A I believe so. I'd have to look -- I'd have to listen
23 or check the notes on that interview again.
24 Q And when Ryan said he -- would keep naming the name
25 Chong, it was pretty clear from that interview is the

1 way he was aware of Chong Lee was because of
2 community gossip, rumors and information that was
3 made public after Chong's arrest, correct?

4 A Well, when he referred to him in person, obviously
5 part of the interview also was where people were and
6 where they were moving and what other information he
7 had.

8 Q Well he talked about the shooter, but his information
9 that it was Chong came because other people told him
10 that Chong Lee had done the shooting, correct?

11 A He -- at this point he was associating the name with
12 Chong as the shooter. However, he was identifying
13 the shooter as an individual person from based upon
14 where he was standing and his description of the
15 events.

16 Q Right. So -- but you didn't show him any photo
17 lineup, right?

18 A A photo lineup, no.

19 Q Did you show him photographs at the time?

20 A I don't believe so.

21 Q Okay. And you didn't take a specific description of
22 height, weight, hair from him, did you?

23 A No.

24 Q Or a specific description of clothing, correct,
25 hats?

1 A We may have asked about that. I don't know if he
2 provided that.

3 Q Okay. Now, when it came to Mikey Thao, Mikey Thao
4 actually told you specifically he did not see Chong
5 Lee shoot the deceased, even though he was in the
6 immediate area of the shooting, and he even thought
7 Chong Lee, who he knew, wasn't in Luna tavern because
8 he thought he was in jail at the time, right, or
9 prison? That's what he said, right?

10 A I don't -- I'd have to review the report.

11 Q Okay. And he also told you that the shooter was
12 wearing a white jacket, correct?

13 A Again, I'd have to review the report.

14 Q And you know that Chong Lee was not wearing a white
15 jacket from having examined the photographs,
16 correct --

17 A Correct.

18 Q -- from the bar. And, in fact, the jacket that he
19 was wearing you had in custody and the color is black
20 and gray, isn't it?

21 A We have a jacket that's in custody. We haven't
22 confirmed if it is Chong's or not.

23 Q Have you bothered to look at the jacket and look and
24 see if it matches the jacket in the video?

25 A The video, because it's an infrared, is -- it's

1 similar to it, but we're actually not sure if it is
2 based on some striping on the -- on the coat near the
3 sleeves and so forth.

4 Q Okay. Can I refresh your recollection about Mikey
5 Thao? Page 2941.

6 A Are you asking me or the judge?

7 THE COURT: What -- counsel, what is this
8 document?

9 ATTORNEY VISHNY: This is the police report
10 written by -- I'll put that in the record.

11 Q (BY ATTORNEY VISHNY) Sergeant Rabas, this is a
12 police report you wrote summarizing your interview
13 with Mikey Thao, right?

14 A Yes.

15 Q Okay. And what he told you is even though he was in
16 the immediate vicinity of the shooting, he told you
17 that he knew Chong Lee, correct?

18 A Yes.

19 Q And although it could have been Chong Lee who did the
20 shooting, he wasn't sure because he thought Chong was
21 in jail and didn't see Chong Lee at Luna that night,
22 right? Isn't that correct?

23 A Correct.

24 Q And regarding Watou Lee, Watou Lee also told you that
25 he didn't know Chong Lee and didn't see him do the

1 shooting, right?

2 A I don't think he knew Chong Lee. I don't -- so

3 obviously he wouldn't be able to identify Chong Lee

4 as the shooter --

5 Q Okay. Now --

6 A -- by name.

7 Q Okay. This interview of Mikey Thao, by the way, it

8 occurred on December 11th, right, the one that the

9 recording has been destroyed?

10 A I was not part of that interview. I don't recall.

11 Q Okay. But December 11th is before Paul Lee was

12 interviewed.

13 A I believe Paul Lee was interviewed that -- on

14 December 11th at night.

15 Q But that was starting pretty late at night, right,

16 when you went to Norka where he was working that

17 second shift?

18 A Yeah. It was in the evening, I believe, like eight

19 or 9:00.

20 Q Right. And --

21 A So I -- Mikey might have been interviewed earlier

22 that day.

23 Q Okay. And as far as Mikey being interviewed earlier

24 that day, that was Sergeant Thao had interviewed him,

25 right?

1 A Correct.

2 Q And it was also Sergeant Thao who went with you to
3 interview Paul Lee, correct?

4 A Correct.

5 Q And at that time Paul Lee was your primary suspect in
6 this case, correct?

7 A Correct.

8 ATTORNEY VISHNY: Nothing further.

9 THE COURT: Attorney Schneider.

10 **EXAMINATION**

11 **BY ATTORNEY SCHNEIDER:**

12 Q The 10th, 11th and 12th of December, every interview
13 every other officer does, was it always shared with
14 everyone else?

15 ATTORNEY VISHNY: That's not within the
16 scope of my --

17 ATTORNEY SCHNEIDER: She's asking about the
18 timing of when Mikey Thao and Sergeant Thao spoke to
19 Mikey Thao and was it before or after Paul Lee's
20 interview or was it on the same day. What I'm just
21 trying to establish is every time an officer
22 finished, did they then stop and have a discussion so
23 everybody was always kept up contemporaneous as to
24 what everyone else was saying.

25 THE COURT: Phrased as that, I'll allow it.

1 A No.

2 Q Was there any ability to do that?

3 A No. Because it was fast moving. In fact, some
4 people -- actually, during the interview with Paul
5 Lee and during that day, there was -- Sergeant Tauber
6 and Sergeant Meyer were actually down from
7 Milwaukee.

8 ATTORNEY VISHNY: Objection. Lack of
9 relevancy. The record is clear. Thao interviewed
10 Mikey Thao, Thao was with this sergeant later on to
11 interview Paul Lee.

12 THE COURT: That portion of the answer I'll
13 sustain, the rest will be stricken.

14 ATTORNEY SCHNEIDER: Nothing then.

15 THE COURT: Attorney Vishny.

16 **EXAMINATION**

17 **BY ATTORNEY VISHNY:**

18 Q Had you talked with Sergeant Thao about whether or
19 not he had interviewed Mikey Thao earlier that day?
20 Had he told you?

21 A No, he did not.

22 ATTORNEY VISHNY: Okay. Thank you.

23 ATTORNEY SCHNEIDER: Nothing.

24 THE COURT: Okay. Sergeant Rabas you may
25 be seated.

1 A Correct. I did testify to that they were not
2 retained.

3 Q And the decision to not retain them, that wasn't a
4 decision made by you alone.

5 A No, it was not.

6 Q And can you name all the people that you recall
7 involved in that decision right now?

8 A It was a discussion in the unit in terms of the
9 investigators that were working on the case, as they
10 were aware that we have interview those party, and
11 then I know one day Lieutenant Gostisha, former
12 Lieutenant Gostisha walked into my office saying that
13 we did not need to retain those recordings.

14 Q Okay. Were you aware that there were other
15 recordings of two people named Jared Randall and
16 Johnny Thao who had been interviewed and not turned
17 over to the defense but the recordings were retained?
18 Did you know anything about that?

19 A No, I was -- I was -- I was aware of the name Johnny
20 Thao several months after the investigation, but I
21 did not know where to interview him.

22 Q Now when you first interviewed Ryan Thao, the very
23 first time, you didn't show him any pictures, did
24 you?

25 A No, I did not show him any picture.

1 Q Do you remember him telling you that the shooter had
2 on a white coat the first time you interviewed him?
3 A Based on the description of his observation, he
4 indicated that the clothing I believe.
5 Q The coat was white, right? That's what he told
6 you?
7 A I don't recall exactly.
8 Q So you can't recover that information now because you
9 don't have the tape to refer to, correct?
10 A He provided some descriptions of the person, but I --
11 I can't recall exactly what.
12 Q Okay. So you don't know one way or another if he
13 told you the coat was white at that time, right?
14 A Yeah. I don't recall from that first interview.
15 Q Okay. And at that first interview did you
16 specifically ask him whether or not he knew who Chong
17 Lee was or not?
18 A No. Again, at that time we did not know -- at least
19 I did not know any particular specific suspect in the
20 investigation. I was pulled into the case three days
21 or two days later, and I simply went in there based
22 on information on those subjects to simply listen to
23 them, get their observation of what they saw, and
24 gather the informations.
25 Q Okay. And so no photos or showing -- there is no

1 identification procedures whatsoever that took place
2 at that time?

3 A No.

4 Q And you really can't recall specifically what he said
5 because, after all, you interviewed a lot of
6 witnesses and you have no tapes now to refresh your
7 memory, right?

8 A I wouldn't classify as interview a lot of witness. I
9 know I interview maybe five, six people in this
10 investigations. In regards to Mr. Ryan Thao, again,
11 it was recorded initially, and based on discussion by
12 the unit and Lieutenant Gostisha, I was asked that it
13 did not need to be retained.

14 Q Okay. Now -- and so it was based on that -- it was a
15 discussion of all the investigators, it wasn't like
16 you going off on some tangent on your own deciding to
17 get rid of tapes?

18 A That's not my style, no.

19 Q Okay. Thank you. All right.

20 Now, I'm going to ask you about a witness you
21 interviewed named Alex Schyling, okay?

22 A Yes.

23 Q You remember interviewing Alex Schyling?

24 A Yes, I did.

25 Q And that was recorded and that tape was retained,

1 correct?

2 A Yes.

3 Q Even though Alex Schyling was not an actual
4 eyewitness to the homicide because he was outside
5 when it happened, right?

6 A Yes.

7 Q And when you talked to Alex Schyling, one of the
8 things you were doing was asking him some questions
9 about Noah Vang, correct?

10 A I believe it was asking about people that were --
11 have contacted each other and them going to a number
12 of bars starting in Menasha and then who -- how they
13 end up in Appleton and then names were then provided
14 to me.

15 Q And one of the names mentioned was Noah Vang,
16 right?

17 A Yeah, I believe so.

18 Q And another one was Tou Shoua, T-O-U S-H-O-U-A,
19 Lee?

20 A I don't have -- Tou Shoua Lee, yes.

21 Q And you also asked if he knew a guy named Tom Lee,
22 right?

23 A I believe so, just basically who were all together
24 that night.

25 Q Okay. Do you remember asking him specifically where

1 Noah Vang lived or worked?

2 A I believe so, because I -- again, I don't have
3 current information at that time about, you know, his
4 address or phone number.

5 Q Do you remember saying the following to Alex
6 Schyling, quote, somebody obviously talked to him
7 already -- referring to Noah Vang, somebody obviously
8 talked to him already so there is no need for me to
9 talk to him, but I just want to get an idea how long
10 you guys have known each other. Do you remember that
11 you said that to Alex Schyling in your recorded
12 interview?

13 A I have to refer back, but if I did say that, then
14 obviously it's in the recording. And it was my
15 understanding that Noah Vang was identified by a
16 number of investigator during the first day or two of
17 the investigation based on that white board, and we
18 identified that person, and it was my understanding
19 that someone was going to talk to him or had talked
20 to him.

21 Q Okay. Now, I'm going to show you what's been marked
22 as Exhibit 1. When you're referring to the white
23 board, I'm just going to show you Exhibit 1. Is this
24 what you're referring to?

25 A It's partial. It's a partial -- not the complete

1 white board but two picture of the many pictures that
2 were placed on the white board.

3 Q And to the right of the photos, do you see how there
4 is a list that says interviewed? Are you familiar
5 with that?

6 A Yes.

7 Q What does that mean, the list that says interviewed,
8 if you know?

9 A That basically just to keep track of number of people
10 that investigator may have interviewed them.

11 Q Okay. Now, everybody on that list is checked except
12 for Alex Schyling, right?

13 A Yes.

14 Q Okay. So next to Alex Schyling is the No. 9141. Is
15 that your number?

16 A Yes, that's correct, my badge number.

17 Q So would this mean, if you know, that the people
18 whose names were checked had been interviewed already
19 but Alex Schyling had not yet been interviewed at
20 that point since he's not checked?

21 A Again, I'm not sure exactly when this was done.

22 Q Okay.

23 A But based on the handwriting, that's my handwriting
24 in terms of Alex Schyling and my number next to his
25 name.

1 Q Okay. Is that your handwriting for the other names
2 here?
3 A I believe so, at least for some of them.
4 Q Okay. So right here Noah Vang's name shows up with a
5 check mark. Does that help refresh your memory
6 whether or not you knew if Noah Vang was interviewed
7 or not?
8 A There is a check mark there and then there is a badge
9 number in front of his name.
10 Q Okay. And so what does that mean to you?
11 A That that officer either have contact with him or
12 have some type of interaction with him or possibly
13 may have conducted interview, but I don't know the --
14 Q Do you know who number 9202 is?
15 A Yes.
16 Q Who is that?
17 A That would be Officer Eric Holdorf.
18 Q Okay. Thanks.
19 So it sounds like at the time you talked to Mr.
20 Schyling, if you said to him, somebody obviously
21 talked to him already, that that would have been your
22 belief at the time.
23 A That's my belief at that time that someone did make
24 contact with him.
25 Q Okay. And have you looked into that any time since

1 then or not?

2 A No, I have not.

3 Q Okay. Now, regarding Mikey Thao, one of the
4 witnesses whose tapes were destroyed, when you talked
5 to Joe Thor, Mikey Thao's name came up, right? Do
6 you remember that?

7 A I spoke to Joe Thor briefly, and I believe he -- I
8 don't recall whether he actually mentioned the name,
9 but the name came to us or our attention when I first
10 got involved.

11 Q I'm going to show you, just to refresh your memory,
12 just a couple of pages of transcript, and if you want
13 to just take a look at it, does this refresh your
14 memory at all about talking to Joe Thor on December
15 18th, 2013?

16 THE COURT: What transcript is this,
17 Attorney Vishny?

18 ATTORNEY VISHNY: It's nothing that's been
19 filed with the court, Judge.

20 THE COURT: Oh, it's not.

21 ATTORNEY VISHNY: No.

22 A It's an interview.

23 ATTORNEY VISHNY: It's an interview by
24 Sergeant Thao of Joe Thor, and it's only a couple of
25 pages. I'm just trying to see if it refreshes his

1 recollection.

2 A I interview Joe Thor or have contact with Joe Thor at
3 his residence on that day, but I don't recall if this
4 is kind of representing our conversation. Just the
5 verbiage itself and the structures of the exchange
6 doesn't really help me to really remember the
7 exchange in terms of between him and I. I know I
8 have interview him briefly because my intention at
9 that time was to speak to Michael Thor. If he
10 mentioned his name, that they have -- that he was
11 talked to Michael -- I mean to Mikey that night, then
12 obviously it would have captured in my report.

13 Q Okay. Well, in the transcript itself he doesn't
14 mention talking to Mikey while he was at Luna bar,
15 right?

16 A That's what the transcription here said. And again,
17 I -- I have not reviewed my report in terms of my
18 dictations on that, so the structure here doesn't
19 really help me to remember the contents.

20 Q And in fact part of it is in Hmong so you can't even
21 hear exactly everything that happened until a
22 translation is received, correct?

23 A Yes.

24 Q Okay. But if it's not mentioned in your report, that
25 doesn't mean it didn't come up in the interview. I

1 mean, you don't write down word-for-word in your
2 reports what occurred.

3 A Correct. But it would have been saved in the
4 recording.

5 Q Right. Okay. Were you aware that when Joe Thor
6 talked to Sergeant Schira that he mentioned seeing
7 Mikey Thao at Luna?

8 A I wasn't part of that interview so I can't say what
9 they discussed.

10 Q Okay. Now, Mikey Thao, were you aware from your
11 overall discussions in the interview that unlike Ryan
12 Thao or Watou Lee that he had some friendlier
13 associations with Joe Thor, Phong Lee and Paul Lee?

14 A Yes, I was aware of that when I first got involved in
15 the investigation.

16 Q Okay. So that unlike Ryan Thao and Watou Lee, he
17 grew up with these various people, Joe Thor, Phong
18 Lee, Paul Lee, knew them and did some socializing
19 with them while at Luna bar, right?

20 A Yeah, that's my understanding, that's how they ran
21 into each other in the foyer.

22 Q And you also talked to Phong Lee, you interviewed
23 him, right?

24 A Sergeant Tauber and I interview him, yes.

25 Q And the name Mikey Thao also came up in your

1 interview of Phong Lee, correct?

2 A Again, I don't recall whether or not we discuss this
3 extensively about Mikey or not, but a report has been
4 -- would have been completed on that interview, and
5 if names were given it would have captured in that
6 report.

7 Q Okay. I'm going to show you a report written by
8 Sergeant Tauber of the interview and just see if that
9 helps to refresh your recollection as to whether or
10 not Mikey Thao's name came up. Does that help
11 refresh your memory, even though you didn't write the
12 report, as to whether or not the name Mikey Thao came
13 up in your discussions with Phong Lee?

14 A Yes.

15 Q And did it come up?

16 A Yes. I believe he mentioned that it was toward the
17 end of bar closing time and they happened to run into
18 each other in the foyer area and then started
19 engaging in conversation because of whether they grew
20 up together or because there was some relationship
21 between them.

22 Q Okay. Thank you.

23 Also, the Mikey Thao name also came up when you
24 interviewed Paul Lee at Norka, right? Do you
25 remember the interview you did with Sergeant Rabas

1 with Paul Lee at Norka?

2 A Yes.

3 Q And the name Mikey Thao came up there as well?

4 A I believe so. It was a long interview and we

5 discussed various people in terms of what they were

6 doing in the foyer, and I believe that that name may

7 have come up at that time.

8 Q Okay. When you interviewed Paul Lee that day on

9 December 11th, you had actually already interviewed

10 Mikey Thao for the first time, correct?

11 A No, I have not.

12 Q You hadn't interviewed him on December 11th?

13 A Not at -- not at Norka when we interview Paul Lee.

14 Q No. I understand that. But had you interviewed

15 Mikey Thao earlier that day? Was it that same day

16 that you interviewed Mikey Thao?

17 A No, it was after we interview Paul Lee at Norka that

18 I made contact with him that I interview him on that

19 night.

20 Q Mikey Thao?

21 A Mikey Thao.

22 Q Okay. So it came afterwards?

23 A After Norka.

24 Q What time that night did you interview Mikey Thao, if

25 you recall?

1 A It was after Paul Lee was taken to the Appleton
2 Police Department for additional question by other
3 officer. I remain at Norka to interview Michael
4 Xiong, which is Chong Lee, the defendant's,
5 brother-in-law. And then after that then I interview
6 -- I believe I made contact with Mikey and then I
7 interview him.

8 Q Okay. Where was that interview conducted?

9 A It was in my squad. I believe I met him somewhere.

10 Q And you didn't show him any photographs either,
11 correct?

12 A No, I did not.

13 Q And at that time did he tell you that he thought
14 Chong Lee was still in jail?

15 A Yes.

16 Q Okay. And he never identified Chong Lee as somebody
17 who did the shooting, right?

18 A Not by name, he just provide descriptions of people
19 coming through.

20 Q Okay. And he said that the shooter had on a white
21 jacket, correct?

22 A I guess -- I mean, I --

23 Q At that time.

24 A If he did mention some kind of clothing, again, I --
25 I don't recall exactly the type of color he used. If

1 he say it was white, then I'm assuming it's white.

2 Q In your re -- when you reinterviewed him in April of

3 2015 he then told you the shooter had on a white

4 jacket, correct?

5 A Again, I have not had a chance to look at that

6 report.

7 Q Would it help you if I showed you your report to

8 refresh your recollection?

9 A Yes.

10 Q The report is actually written by Sergeant Rabas,

11 correct?

12 A Correct.

13 Q Okay.

14 ATTORNEY VISHNY: Sorry, Judge. I thought

15 I was a little bit more organized than that.

16 Q (BY ATTORNEY VISHNY) Okay. I'm showing you a copy

17 of Sergeant Rabas's summary of that interview

18 regarding Mikey Thao, and just ask you if that helps

19 refresh your memory as to what Mikey Thao said in

20 April of 2015 --

21 A Yes.

22 Q -- regarding what the shooter wore.

23 A Yes. On Page 346 he -- Michael -- Mikey stated that

24 he doesn't know who had the gun. He initially states

25 a guy with a white coat with stripes on the arms have

1 the gun.

2 Q Okay. And he told you he thought the stripes were on
3 the complete arms and not just the cuff, right?

4 A That's what's in the report, yes.

5 Q Earlier in this investigation had you been looking
6 for somebody with a white coat with stripes on the
7 arms, like back in December of 2013? Do you know?

8 A We -- again, when I first got involved, which was a
9 couple days later, I did not have any specific
10 information about a particular suspect other than
11 making contact with witnesses to get information as
12 to what they saw and who were they with that night.
13 So I don't -- I didn't have any specific information
14 about particular color, clothing or description of
15 suspect other than what happened in the lounge based
16 on who was there, who came in and who went out.

17 Q Now, Mikey Thao told you that he knew Chong Lee
18 because he had gone to school with Chong and his
19 family, correct?

20 A Yes. He grew up with them. I think he was more of a
21 -- had more of a relationship in terms of
22 acquaintance and know each other with Paul Lee, but
23 he did mention the other brothers as well.

24 Q And in this interview in April of 2015 you asked
25 Mikey whether he thought -- whether he knew that

1 Chong had been charged with the shooting, and Mikey
2 said, yes, he knew that Chong had been arrested,
3 correct?

4 A Yes.

5 Q And you asked him if Chong was the right guy, and his
6 response was, well, it could have been him, but he
7 didn't say I saw Chong Lee do it, correct?

8 A Correct. He didn't give -- he didn't say the names
9 but -- other than what he saw.

10 Q And what he said was, in fact, he wasn't sure because
11 he thought Chong Lee was in jail and he had not seen
12 Chong Lee at Luna that particular night, correct?

13 A Correct. He thought he was in jail.

14 Q Right. And that -- so whatever information he has
15 linking Chong Lee specifically is because of things
16 he saw in the news afterwards, right?

17 A No. I think it's based on what he saw that night.

18 Q Well, what he told you was he didn't see -- he
19 thought -- wasn't sure because he thought Chong was
20 in jail, didn't see Chong Lee that night, and he saw
21 on the news that Chong was charged with the murder
22 and, again, he can't identify the shooter, correct?

23 A Correct. He mention about Chong had been arrested
24 for the shooting.

25 Q Okay. So he had what might be called post-event

1 information. In other words, his memory included
2 things he had heard about after the arrest, not just
3 what he knew at the time after the shooting but
4 before a suspect had been arrested, correct?

5 A I'm not an expert in the area so I can't go that
6 far.

7 Q Okay. Well, he told you that he had information that
8 had occurred after the arrest, not just from the time
9 of the shooting, right?

10 A He indicated that he had learned that Chong has been
11 arrested for the --

12 Q And clearly when you interviewed him on December 11th
13 he wouldn't have known that because Chong hadn't been
14 arrested yet, correct?

15 A Not on December 11th, no.

16 Q And when you interviewed Ryan Thao back in December,
17 he couldn't have possibly known that because Chong
18 hadn't been arrested yet, right?

19 A Correct.

20 Q And Ryan Thao didn't know Chong Lee, correct? Told
21 you he didn't know him, didn't he?

22 A Correct.

23 Q And Watou Lee also told you he didn't know Chong Lee,
24 correct?

25 A Yes.

1 Q And none of these individuals back in the December
2 interviews were shown any pictures of Chong Lee or
3 other people from the white board, correct?
4 A I didn't.
5 Q You didn't. Well you're the person who interviewed
6 them, right?
7 A Correct.
8 Q Okay. And during the interviews in April of 2015 you
9 didn't show any photographs to them either, right?
10 A On the April one with Sergeant Rabas? I think we did
11 bring picture of them from the white board showing
12 that their name has been or the picture has been
13 inadvertently turned over to the defense and that
14 possibly defense may reach out to them just to make
15 them comfortable in terms of why we reengaged them.
16 Q Right. But you didn't show them pictures of other
17 suspects like Chong Lee, Paul Lee, Joe Thor or Phong
18 Lee, correct?
19 A No.
20 Q You know, the last time -- I mean both now and
21 previously you testified about consultation about
22 destroying these tapes. Were there consultations to
23 your knowledge about destroying any other tapes in
24 this case?
25 A It's -- no, at least there was no -- because the

1 other witness have not come forward or make it known
2 that they did not want to get involved, they did not
3 want to be identified. The only discussion I have
4 was with those three particular parties.

5 Q Okay. So you weren't aware that Johnny Thao or Jared
6 Randall had been talked to and said they didn't want
7 to be identified either but their tapes had been
8 retained?

9 A I did not participate in those interviews, so I can't
10 say as to what they did say to the officer or did not
11 say.

12 Q But was there a -- so there was no discussion
13 regarding what to do with the tapes of other
14 witnesses who did not want to be identified.

15 A Not -- not with me, no.

16 Q Okay.

17 ATTORNEY VISHNY: Nothing further.

18 THE COURT: Miss Schneider?

19 **EXAMINATION**

20 **BY ATTORNEY SCHNEIDER:**

21 Q Related to Noah Vang, you spoke with Alex Schyling
22 who indicated he and Noah were outside of Luna at the
23 time of what they believe to be the time of the
24 shooting, correct?

25 A Correct.

1 Q Based upon that did you do anything to check or
2 verify what Alex said in that regard?
3 A No, I did not. It was my understanding that other
4 officer either was going to or have made contact with
5 Noah.
6 Q Okay. But what I mean is do you remember at any
7 point trying to check video from either Luna or
8 outside of Luna to confirm Alex when he said he was
9 outside the bar at the time of the shooting?
10 A Yes. There was a discussion about someone would look
11 at the street cameras on Division and College and to
12 verify that, and I think that that was done.
13 Q Okay. But you didn't do that.
14 A Not myself.
15 Q Your work probably related to the video and watching
16 the videos has been very limited?
17 A Yes.
18 Q Okay. Okay. So at -- you speak to Paul Lee at
19 Norka?
20 A Yes.
21 Q I just want to walk through a sequence. And then you
22 talk to Mike Xiong, his brother-in-law, at Norka.
23 A Yes.
24 Q Then you went and spoke to Mikey Thao.
25 A Yes.

1 Q And at that time Paul Lee had been taken to the
2 Appleton Police Department.

3 A Yes.

4 Q You then go back and are involved again in the
5 interview with Paul Lee at the Appleton Police
6 Department.

7 A Yes.

8 Q Okay. Did you share with Sergeant Rabas what Mikey
9 Thao had told you prior to the time when you spoke to
10 Paul Lee at the police department?

11 A No. Sergeant Rabas was not involved in that second
12 interview, it was Sergeant Schira, and another
13 officer, investigators were doing other tasks, and I
14 don't recall actually going to him and say this is
15 what Mikey said, other than when I return back to the
16 police department I was asked to reinterview Paul
17 Lee.

18 Q Did you tell Sergeant Schira what you had learned
19 from Mikey Thao before you went back to speak to Paul
20 Lee at the police department, to the best of your
21 recollection?

22 A I don't recall sitting down with him and talk about
23 what Mikey said, other than I may have mentioned
24 about making contact with Mikey just so that people
25 would know, but in terms of discussing content, I

1 don't believe so.

2 Q Was it something where there were multiple officers
3 interviewing multiple witnesses at the same time?

4 A Yes. I mean you got officers that were in Milwaukee
5 at the time, you got other officers that were trying
6 to reconfirm information or recontact other people.
7 Again, I was not a supervisor so I didn't oversee who
8 was doing other than I was tasked to reinterview Mr.
9 Paul Lee that night.

10 Q Okay. Is the photograph of a portion of the white
11 board still in front of you, Sergeant Thao?

12 A No, it's not.

13 Q But I don't think you need it unless you feel you
14 need it. You don't truly know what those check marks
15 mean, correct?

16 A The check mark that I put -- I were putting there was
17 simply to indicate people that has been identified
18 from the white board. The actual day that they --
19 where the contact was made or interview, I -- I have
20 no idea.

21 Q Were you responsible for writing the names or placing
22 the check boards (sic) on there?

23 A No, I was not. I did write names -- some names on it
24 just to keep track of who the officer made contact
25 with those people so that we have an idea so we don't

1 repeat the same interview.

2 Q And I think earlier did you say you actually wrote
3 Alex Schyling's name on the list?

4 A Yes.

5 Q Do you recognize that as your own handwriting?

6 A Yes.

7 Q Okay. Now, at the time -- so you talked to Mikey
8 Thao, and he at that point tells you he doesn't want
9 to be identified, right?

10 A Very firmly.

11 Q When you were involved in follow-up interviews with
12 other parties, or even initial interviews, if they
13 brought up the name Mikey Thao, Ryan Thao or Watou
14 Lee, did you turn the direction of the interviews so
15 those names weren't mentioned again?

16 A No.

17 Q Did you tell them we can't talk about those people?

18 A No.

19 Q Did you let them share whatever they may or may not
20 know about those people?

21 A Of course.

22 Q Okay. And is it a situation when there was a
23 decision, or discussion and then a decision made not
24 to retain the Mikey, Ryan and Watou recordings, did
25 you take any steps to go back and try to get rid of

1 any reference to those people in all the other
2 reports or recordings?

3 A Yes.

4 Q Okay. But did you go back -- maybe you got rid of
5 what they told you, correct?

6 A Yes.

7 Q But if you did an interview with Paul Lee and Paul
8 Lee mentioned the name Mikey Thao, did you go back to
9 Paul Lee's interview and like bleep over or X out on
10 a report so you couldn't read or there weren't
11 references to those people?

12 A No, we did not do that, or I did not do that.

13 Q So you left all those names in the reports?

14 A Of course.

15 Q Okay.

16 ATTORNEY SCHNEIDER: Then I don't have
17 anything further for Sergeant Thao.

18 THE COURT: Sergeant, I just want to follow
19 up with you on the check marks.

20 My recollection is that you were the individual
21 who wrote, amongst other names, but you wrote the
22 name Noah Vang on the -- I'm referencing Exhibit 1 as
23 the white board, correct?

24 THE WITNESS: Yup.

25 THE COURT: Did you also write the check

1 mark on there?

2 THE WITNESS: I don't -- I don't recall all
3 of them, but definitely some of them. For example,
4 like, I interview Tou Shoua Lee. My badge number is
5 in front of it, check mark after that saying that I
6 interview him. There is a check mark after Tom Lee.
7 Of course I did not interview Tom Lee. I don't know,
8 you know, who put that check mark there. I interview
9 Phong Lee with Sergeant Tauber, and that's why our
10 badge number were there, even though he was interview
11 previously by other officers. So I can't say that
12 all of them were done by me, or I can't say that
13 just, you know, but for sure those names I mentioned
14 to you, sir.

15 THE COURT: Now, next to Mr. Vang, Noah
16 Vang, there was -- I believe it was No. 9202, which I
17 think you had identified as Officer Holdorf, correct?

18 THE WITNESS: Yes.

19 THE COURT: And what is the -- what was
20 your understanding as to the connection between
21 Officer Holdorf and Mr. Vang?

22 THE WITNESS: It's my understanding that
23 that's why the officers's badge number or name, in
24 this case the badge number, was in front of each name
25 was that that officer would be responsible for trying

1 to make contact with that particular individual,
2 would either have made or going to make.

3 THE COURT: Okay. So although you don't
4 know the specifics of the contact between Mr. Vang
5 and Officer Holdorf, it was your understanding that
6 there was an expectation that some contact, be it an
7 interview or other contact, would be conducted
8 between Officer Holdorf and Noah -- Noah Vang; is
9 that a fair understanding?

10 THE WITNESS: Correct. Basically just an
11 organizational chart with names so we don't repeat
12 making contact with one individual many times.

13 THE COURT: Attorney Vishny?

14 ATTORNEY VISHNY: Yes.

15 **EXAMINATION**

16 **BY ATTORNEY VISHNY:**

17 Q To your knowledge, on that list, every single person
18 has been interviewed and a report filed except for
19 Noah Vang, right?

20 If you look at that list, of all the names with
21 the check marks, you're aware that everyone of those
22 people has been interviewed and police reports and
23 tapes provided to the state and the defense, correct?

24 A I'm very concerned that at least with Tou Shoua Lee,
25 with Alex, and obviously with Paul Lee that we talked

1 that I completed a report. I want to assume that if
2 those people interviewed that those officers would
3 have completed report and would have included in
4 there too.

5 ATTORNEY VISHNY: Okay. Nothing further.

6 THE COURT: Attorney Schneider.

7 **EXAMINATION**

8 **BY ATTORNEY SCHNEIDER:**

9 Q But before today, you didn't have Exhibit 1 to look
10 at or go -- the ability to go ask or check with
11 anyone?

12 A No, I wasn't aware of it so I did not have the
13 ability to go back and confirm and be able to answer
14 question.

15 ATTORNEY SCHNEIDER: Okay. Thank you.

16 ATTORNEY VISHNY: Nothing further.

17 THE COURT: All right. Thank you.

18 THE WITNESS: Thank you.

19 THE COURT: Are we ultimately going to talk
20 to Officer Holdorf now as a result of this?

21 ATTORNEY VISHNY: Why don't we just let --

22 ATTORNEY SCHNEIDER: I can -- I mean, Rabas
23 said he checked with MEG guys, so I think even if we
24 bring him in and just ask if that included checking
25 with Lieutenant -- or Sergeant Holdorf. I'm not sure

1 of the title. I'm thinking of his dad when I say
2 lieutenant.

3 ATTORNEY VISHNY: Yeah. Let's just recall
4 him. I'll recall him. That's fine.

5 THE COURT: You're still under oath.

6 **EXAMINATION**

7 **BY ATTORNEY VISHNY:**

8 Q Do you know Officer Eric Holdorf?

9 A Yes.

10 Q And did you check with him to see whether or not he
11 had ever interviewed Noah Vang?

12 A Yes. In reference to this case, yes.

13 Q Yes. In reference to this case. What did he tell
14 you?

15 A He said no. At least he responded in an e-mail that
16 he did not.

17 Q Okay.

18 ATTORNEY VISHNY: Judge, I'm going to move
19 for the production of the e-mails between Sergeant
20 Rabas, Officer Holdorf and -- Officer Probst -- or
21 Officer Probst. I'm going to ask that the State
22 provide those. It looks like we're going to be back
23 here at 1:30 at this point.

24 ATTORNEY SCHNEIDER: Do we have all day or
25 just the morning set?

1 THE COURT: We did have just the morning
2 set. I can squeeze you in and around things maybe.

3 ATTORNEY SCHNEIDER: Okay.

4 ATTORNEY VISHNY: I'd ask that those be
5 produced at 1:30.

6 ATTORNEY SCHNEIDER: That should be no
7 problem.

8 THE COURT: That request will be granted.

9 **EXAMINATION**

10 **BY ATTORNEY SCHNEIDER:**

11 Q Let me just ask you this. Could you be wrong and
12 9202 is actually Sergeant Holdorf and not Officer
13 Probst?

14 A Yeah. That's why when -- I wasn't sure of the
15 number. I'd have to actually look at our officer
16 numbers. Not being on the road, I'm not familiar
17 with them.

18 ATTORNEY SCHNEIDER: Nothing further.

19 ATTORNEY VISHNY: Nothing.

20 ATTORNEY SCHNEIDER: Should we approach to
21 talk about timing?

22 THE COURT: Sure. Why don't we do that.

23 (A bench conference was held.)

24 (Lunch recess.)

25 THE COURT: Okay. We have --

1 ATTORNEY VISHNY: Judge, before you
2 start.

3 ATTORNEY SCHNEIDER: We tried to make peace
4 during the break.

5 ATTORNEY VISHNY: We've come to an
6 agreement. Well, at least a partial agreement. This
7 is what I've agreed to.

8 THE COURT: You just stole my thunder.

9 ATTORNEY VISHNY: Sorry. I just can't help
10 myself.

11 THE COURT: That's all right. Go ahead.

12 ATTORNEY VISHNY: I'm not going to ask for
13 suppression of the translated materials as long as
14 they're provided by October 12th, which is when Miss
15 Schneider says they can do, but I'm asking the court
16 to rule today that if they aren't provided on that
17 date that it should be suppressed.

18 ATTORNEY SCHNEIDER: I don't have any issue
19 with that. It allowed me to check e-mails over lunch
20 and e-mail back and forth with the person doing it.
21 What I'll do is I'll send them in parts. I'm not
22 going to wait and send them all on the 12th. Right
23 now I know I have eight phone calls that I just have
24 to finalize and organize and get to her.

25 The other thing I think we discovered this

1 morning is that there may have been, and we're going
2 to sort this out, some doubling of efforts on English
3 portions of interviews with witnesses, so we're
4 trying to sort that out to figure out what's been
5 done, what's not been done, or who's doing what at
6 this point, because she used Joe Thor's transcript,
7 which I didn't realize she had one done yet. So
8 we're working through that too.

9 THE COURT: Okay.

10 ATTORNEY SCHNEIDER: We picked some
11 tentative dates for things to be due. I don't know
12 if the court's okay with the dates we're suggesting,
13 but I'm going to at least explain what we've talked
14 about.

15 Right now on November 5th we have a motion
16 hearing scheduled already in this case because we had
17 blocked some additional time. I think at least
18 tentative jury instructions, witness lists, verdict
19 form filed.

20 ATTORNEY VISHNY: I'm sorry. What? Jury
21 lists?

22 ATTORNEY SCHNEIDER: Jury instructions,
23 witness list and verdict form filed, you know, the
24 day or when we come to the motion hearing.

25 I think probably long ago we both filed some

1 motions in limine, but I'm just going to double-check
2 to make sure those housekeeping ones --

3 THE COURT: Some of the boilerplate ones
4 have been filed already.

5 ATTORNEY VISHNY: Yes.

6 ATTORNEY SCHNEIDER: So, if not, we'll try
7 to update anything on the 5th.

8 I don't know what I may need to request related
9 to defense expert, so I asked -- I don't know if I'm
10 going to want a *Daubert* on them or not. I asked,
11 rather than try to pick another date, to have them
12 check to see if he might be available for phone
13 testimony on the 5th because we have the afternoon
14 blocked off, and then if that's not going to work,
15 we'll let the court know, but I at least want to put
16 you, given their notice, that we likely may want to
17 request a *Daubert* hearing, and we're going to try to
18 work that in within the current time we already have
19 scheduled.

20 THE COURT: Is there going to be -- the
21 expert may not have a report that he's preparing. Is
22 there going to be a disclosure of an expert report,
23 Attorney Vishny?

24 ATTORNEY VISHNY: Okay. So here's what's
25 going on. Very brief summary was prepared and

1 provided today, and I will also e-mail curriculum
2 vitae of my expert, which I have, to Miss Schneider.
3 I don't know when Mr. Trainum's report is going to be
4 done exactly. I did text him after talking to Miss
5 Schneider, and he wrote back saying that he probably
6 could be available for telephonic testimony November
7 5th. He writes, have two weeks including that
8 blocked off for a DC trial where I'm told I will
9 probably not testify. Sure I can do a work around if
10 that changes. So it appears to me likely that he'll
11 be available. I don't know, you know, in terms of
12 his report when I'm going to have something exactly,
13 but when I get it, I'll turn it over immediately.

14 THE COURT: Okay.

15 ATTORNEY VISHNY: I mean, there is no
16 reason to wait so --

17 ATTORNEY SCHNEIDER: And I didn't know,
18 because I didn't have my calendar, how much time on
19 the 24th we had blocked because we said pretrial, so
20 I don't know if we just thought we had an hour.

21 THE COURT: And my clerk just confirmed we
22 have three hours set aside, so I think we had -- I
23 think we had expected that we might need additional
24 time.

25 ATTORNEY SCHNEIDER: On both days, the 5th

1 and the 24th? Okay.

2 ATTORNEY VISHNY: I'm going to text him
3 right now, too, that -- just bear with me if you
4 think I'm being rude using my phone.

5 THE COURT: No. That's fine, Counsel.

6 ATTORNEY SCHNEIDER: Then, just in terms,
7 while she's doing that, we had talked about witness
8 lists so that we could get -- I could have my
9 investigator start doing prior conviction checks, and
10 what -- and we had this discussion months ago when I
11 talked with Attorney Vishny out in the hallway. I
12 think she said she's not going to have any additional
13 witnesses other than those that have been disclosed
14 in the reports. I told her my concern about that is
15 I don't want the officers to run 170 names when a lot
16 of these people won't be called. So I'm going to
17 file a witness list, they're going to, I think, if
18 there are people I'm not specifically naming that
19 they know they might be likely to call, they'll
20 provide those so we can have some prior conviction
21 checks done. I don't want to start trial and then
22 the morning of get the list of here's three people
23 we're calling.

24 ATTORNEY VISHNY: I just have a question
25 about prior conviction checks. I mean we have the

1 same -- we have access to CIB, but the police run an
2 NCIC record so things from out of state pull up. We
3 don't have access to that.

4 ATTORNEY SCHNEIDER: Yes. And I explained
5 what I would do for a format is we list the person's
6 name, we list any criminal we could find within ten
7 years, except for traffic, we list anything we can
8 find outside of ten years, then after that separate
9 subheading. We agreed we're not listing any OARs,
10 but then I would list after that any traffics whether
11 it's within or with outside of ten years. We have a
12 group of people who are young so we will also look to
13 see what we can -- I don't have access to everybody's
14 juvenile records, and sometimes people think we do
15 and we don't, but I will check and do a juvenile
16 record search, because a lot of our people are 22 and
17 younger as well to see what records we can provide.
18 I'll give a -- I'll prepare those sheets. I'll give
19 copies to everyone. If I give them to the court, if
20 there is anyone with juvenile, I'm going to put the
21 whole packet then under seal just so that it's sealed
22 in the court's file. That would be our plan. And we
23 would try to have that -- those lists and summaries
24 done by November 13th is the date we thought because
25 then we would still have time before the 24th to kind

1 of have them double-check or if we miss someone there
2 would be time to look at that.

3 For whatever reason, and I know it's because of
4 scheduling, the 3D, we talked about this before,
5 because Luna has been bought and we knew that the new
6 owner was going to make significant changes to the
7 building and to the inside, so we had the state
8 patrol prior to that go and scan using different
9 equipment so that they could create some 3D images.
10 Those are supposed to be done and they are not done.
11 Part of the reason I'm now being told is because they
12 were leasing the equipment and now they're purchasing
13 the equipment, so I think they're waiting to get
14 their purchased equipment. And I also know, their
15 supervisors wouldn't say this out loud, but without a
16 deadline they're given very limited ability to work
17 on a lot of the reconstruction stuff anymore, but if
18 the court does an order, which I'm going to ask the
19 court to do, then my trooper can go to his
20 supervisors and say, I need you to authorize me to do
21 overtime to complete this, because that's basically
22 what I'm finding out is having to be done to get
23 these done.

24 THE COURT: So do we want to use a November
25 13th deadline?

1 ATTORNEY SCHNEIDER: I was going to say
2 October 23rd.

3 THE COURT: That's fine.

4 ATTORNEY SCHNEIDER: What I'm going to do
5 though is I just want to make sure that the officer
6 doesn't already have major trials between now and
7 then, so my order will come to you either with the
8 23rd or the 30th of October as a deadline for those.

9 THE COURT: And you're okay with that,
10 Attorney Vishny?

11 ATTORNEY VISHNY: Yes.

12 THE COURT: Okay.

13 ATTORNEY SCHNEIDER: Okay. Then just to
14 put on the record, previously we had talked about a
15 person named Megan Kelly, and we had talked about a
16 lot of letters and then phone calls. And there was
17 some information I was supposed to provide the court
18 about phone calls, and I did in a memo. We provided
19 a disk of all the letters, as well as Sergeant Rabas
20 summarized portions of various letters. After that,
21 I discussed with Attorney Vishny that there are
22 hundreds of hours of calls. Literally, we'd sit here
23 through our trial date listening to all of them. I
24 don't intend to use any of them. I don't know, I
25 mean, there is discussions about 50,000 other things,

1 but my -- I'm not using them. Given that, I think
2 they don't want to get them to listen to either, but
3 I just want to -- if it's something the court had on
4 its checklist, we've kind of come to resolution on
5 that.

6 There aren't any Amanda Krohn jail phone calls
7 because she was in jail with the defendant, but there
8 are letters between the defendant and Amanda Krohn,
9 and it would be my intention to potentially use some
10 of those letters. I will continue to work with them.
11 And I know Sergeant Rabas did identify a series of
12 those that may be relevant as opposed to a lot of the
13 other ones we found that just are talking about
14 whatever under the sun.

15 I think that's everything I had. We want to get
16 all our other miscellaneous stuff done before you
17 started making your ruling, but I think that's
18 everything I had on my list for today, and I'll just
19 ask for permission if I missed something.

20 THE COURT: I just want to talk briefly
21 before I make my rulings. Was the reference to "beat
22 this case", and I know that's all -- that's been
23 briefed. One of the -- and largely what it comes
24 down to is, is it relevant, or if it's relevant, is
25 it more prejudicial than not. And, Miss Schneider, a

1 little bit more detail on how that becomes relevant.
2 My understanding is that this is a comment made by
3 Mr. Lee once he's in jail and makes reference to --
4 makes the statement "beat this case", as I understand
5 it, and the question being that's such an amorphous
6 concept. It could mean, hey, I -- I'm going to --
7 I'm going to be proven not guilty, I'm going to be
8 acquitted, it could mean something else. And how
9 does that help the fact finder at the end of the day.
10 And I think that's largely Attorney Vishny's point is
11 that it --

12 ATTORNEY VISHNY: It doesn't. We didn't
13 see any examples where it was tied into, well, if my
14 brother Paul doesn't show up for court, I'll be okay
15 then because I'm gonna beat my case, which would be
16 tied into, I think, the State's theory, the
17 intimidation of witness count.

18 THE COURT: And to a certain degree that's
19 what I'm asking for. Is there context around it that
20 tends to make it more relevant other than an isolated
21 comment.

22 ATTORNEY VISHNY: The defense position is
23 that there is not. And I think the State filed a
24 list with the court of the references, if I'm not
25 mistaken.

1 ATTORNEY SCHNEIDER: Yup. The court wanted
2 us to. I'm just looking at my June 19th filing
3 because that was the filing the court had wanted.

4 ATTORNEY VISHNY: So the -- so I'm
5 gathering -- I'm a little unclear about one thing
6 about Miss Schneider's memo which is that she writes
7 "beat the case" or like phrases appear in numerous
8 letters and transcripts and then she gives some
9 examples. Are there other examples besides these
10 that the State would seek to admit?

11 ATTORNEY SCHNEIDER: No.

12 ATTORNEY VISHNY: Okay. So I can address
13 each and every one of them, Judge, if you would
14 like.

15 THE COURT: That would be fine, Counsel.

16 ATTORNEY VISHNY: Okay. So in a letter to
17 somebody named Steph, I have no idea who that is, but
18 I don't think it's a witness for the State at all, he
19 says, I'm pretty sure I'll "beat this case" though.
20 Well, I -- I don't see the difference between that
21 and saying -- I mean saying that "beat this case" is
22 in the vernacular, I'm pretty sure I'm going to be
23 found not guilty. That can be an assessment of the
24 evidence in a case. I don't see how it's relevant.

25 In a letter to Joe Thor he says, I just never

1 thought family would do this to me but that's past.
2 I will beat this and be out. He's not connecting
3 this at all with trying to intimidate any witnesses,
4 he's expressing confidence that no matter what, he is
5 going to be found not guilty and therefore be out of
6 custody.

7 In a letter to Blong, I don't know who Blong is,
8 I don't think that's a State witness. I have a big
9 chance of winning. I really do hope that I beat this
10 case. After I beat it, I'm going to move to
11 California, far away from these people. I don't see
12 the relevance of that.

13 Now, in a letter to Teng Lee, who it's unclear
14 to me if the State is going to call him, he said that
15 Sunny Vang, I don't know who that is, that's not a
16 State witness, should, quote, shut the fuck up or
17 when I beat this case I'll be happy to catch a case
18 for putting an AC wannabe in his grave. I ain't in
19 prison yet until they say guilty, so that bitch ass
20 AC want to best learn who he talks about. You know,
21 this goes on and on. The language is really
22 offensive in here. Do you want me to keep reading it
23 out loud since you have it in the file?

24 THE COURT: No. That's okay.

25 ATTORNEY VISHNY: Okay. I think I'll not

1 do that. But this reference to shut the F up by
2 Sunny Vang, Sunny Vang is not a witness in this case
3 against Chong Lee, you know, at all. That name
4 doesn't appear anyway in the discovery. I think that
5 this is a reference to other matters that are not
6 before the court allegedly involving Chong Lee and
7 his social circle and that they are not relevant to
8 the trial in this case. He's simply talking about
9 something that's angering him that's going on on the
10 street that he intends to deal with.

11 And then, finally, in the letter to Amanda
12 Krohn, everybody be like how you gonna beat your
13 case. LMFAO. My case is a walk in the park. That's
14 why I'm not worried. Why worry when I wasn't the one
15 to do it. I don't want to catch a homi before seeing
16 my fate on my current one. A homi meaning -- is
17 probably a homicide. I'm assuming that's what it
18 means. I don't know. H-O-M-I. I'm not sure what
19 the reference is. And he's expressing some anger.

20 But, again, there is nothing that has any
21 relevance to the facts of this particular case. So,
22 I don't see any of these directly being relevant to
23 the intimidation of witness charges. So there is
24 nothing in one of these saying that he's attempting
25 to prevent any of these individuals to testify --

1 from testifying, and when he talks about this, he's
2 really talking on two occasions, he's expressing
3 confidence that he'll be found not guilty, and on the
4 other two occasions he appears to be referring to
5 other matters that are not part of this charge but
6 could potentially involve some type of criminal
7 activity that are -- have nothing to do with this.
8 So I don't see how they're relevant or probative, and
9 I -- I frankly don't see them as being relevant or
10 probative at all, but they are so vague that any
11 marginal probative value, if the court were to find
12 that, would be substantially outweighed by the danger
13 of unfair prejudice.

14 THE COURT: Miss Schneider, anything
15 further?

16 ATTORNEY SCHNEIDER: You know, and I
17 frequently get to the point where we see one side of
18 a coin and defense sees another, but I think there
19 are several references. Some of these are pretty
20 innocuous. I'm pretty sure I'll beat this case
21 though. That can be argued either way. I think what
22 we submitted in our filings is that, through cross or
23 other means, they can, well, elicit or ask, well
24 wouldn't that mean that he didn't do that and that's
25 why he's writing "beat the case" or "beat this case".

1 But there are other references in here, Judge, where
2 there is threats, I would argue, there are threats or
3 comments about people talking about him and when he
4 beats his case and coming out and what's potentially
5 going to happen that I think are important and
6 relevant to the intimidation charge. The one long
7 quote she didn't finish was a letter to Teng where it
8 says, pussy ass nigga wasn't saying shit when I was
9 on the streets. Ain't no one want to talk shit bout
10 me when I was on the street. Niggas gonna learn, or
11 niggas gon learn real quick when I beat this case and
12 come out. And that's in the same letter where he
13 talks about Sunny Vang needing to shut up or he's
14 going to catch a case for putting an AC wannabe in
15 his grave.

16 The last one, everyone asks me about how I'm
17 gonna beat my case.

18 THE COURT: But are those -- are those
19 references made with respect to potential witnesses?
20 I mean, those -- giving the benefit of the doubt,
21 those could be construed as indications of future
22 criminal activity - and again, looking at it in its
23 broadest terms - but in and of itself, are those
24 people to whom he's referencing, are those witnesses?

25 ATTORNEY SCHNEIDER: Sunny Vang is not a

1 witness to the incident. Sunny Vang was someone who
2 was sending Facebook messages or posting Facebook
3 messages to Chong. I don't know if they were
4 directly communicated to his sister. And that's why
5 I just asked Sergeant Thao to help me clarify about
6 that. And Chong got upset about whatever Sunny was
7 posting.

8 ATTORNEY VISHNY: Let me just say this. I
9 don't -- I've never heard of Sunny Vang until this
10 filing. I don't know who it is. It's not a witness
11 in the case. It's not anybody who ever made a
12 statement to the police. And --

13 ATTORNEY SCHNEIDER: I think it just -- my
14 argument --

15 ATTORNEY VISHNY: It wasn't in the
16 discovery, so I don't think it appears to be related
17 to this case.

18 ATTORNEY SCHNEIDER: My argument is it
19 still goes and it's related to the time period of our
20 intimidation charges. And then when he makes the,
21 everyone be like how you gonna beat your case, I
22 don't want to catch a homi, yeah, I would say homi,
23 before seeing my fate on my current one, and I'm
24 close to beating people's ass right now. When you
25 talk about the intimidation charge, I think those are

1 relevant and related.

2 ATTORNEY VISHNY: How is he going to beat
3 somebody up? He's in jail. You know? And he's
4 letting off steam in these letters about what's going
5 on, and these letters were written quite -- he's been
6 in jail, the letters to Amanda Krohn, he's been in
7 jail for a substantially lengthy period of time and
8 they are really unrelated in time to the times where
9 on the phone he is attempting to dissuade witnesses
10 from showing up, which, by the way, are never in
11 terms of violent threats, it's just like, I really
12 don't want somebody to show up because then it's
13 going to hurt me before my -- these are all before
14 his preliminary hearing. Amanda Krohn letters happen
15 almost a year later. But -- so they -- they really
16 don't necessarily relate to that time period. But
17 even if they were in the time period, they have to
18 have some nexus or some link with an attempt to
19 dissuade a witness from showing up in court, and that
20 can't be shown in any of these quotes.

21 ATTORNEY SCHNEIDER: There is a lot of
22 things people can direct and ask and do from jail,
23 arrange drug deals, arrange people to communicate
24 with other people, send letters to people, sell
25 drugs, go delete things, do things, while they're in

1 jail that can be related to. So I wouldn't say just
2 because he's in jail doesn't mean he's not a threat
3 or couldn't be a threat.

4 THE COURT: Let me -- because I want to
5 make sure I get enough information on the other --
6 the gang -- the gang related motion that has been
7 filed in terms of allowing reference to the gangs,
8 and if I understand correctly, you want to be able,
9 Attorney Vishny, Attorney Weitz, to be able to make
10 reference to a gang affiliation that allegedly Mr.
11 Lee and the person making the statements or the
12 person who was questioned are -- they're part of the
13 same gang, correct?

14 ATTORNEY VISHNY: No, that's not what I
15 want to do.

16 THE COURT: Okay. That's where I was
17 mistaken. I was of the understanding, which is --

18 ATTORNEY VISHNY: No. Originally I had
19 written a briefing to the court saying, basically, if
20 the State is allowed to put in the gang references
21 that we would have as part of our theory of the case
22 that in fact Chong Lee is not a member of the same
23 gang as these witnesses --

24 THE COURT: Yes.

25 ATTORNEY VISHNY: -- against him. And if

1 the State is allowed to bring in this gang matter, we
2 would still incorporate that as part of our theory of
3 the case. My understanding was the court said the
4 State could not bring those things in, and I said
5 unless the defense opened the door.

6 But I have a different evidentiary purpose for
7 wanting to cross-examine some of the prosecutor's
8 witnesses and the police who questioned these
9 witnesses about the methods that they were
10 interrogated. So, in other words, and I haven't
11 memorized or prepared my cross-exams yet, so if I
12 misspeak, I apologize in advance, but I believe that
13 numerous witnesses were questioned by members of the
14 Appleton Police Department, and during these
15 interrogations, members of the Appleton Police
16 Department basically, for lack of a better word,
17 threatened these witnesses with prosecution that they
18 were part of this gang and therefore they must be
19 involved in this homicide and they must have
20 something to do with it and that they had a choice,
21 they could either cooperate with the police or they
22 could cover up for their gang buddies, they could,
23 you know, potentially go to jail themselves, and that
24 is cross-examination for the testimonial intent of
25 those witnesses, both at the time they talked to the

1 police and potentially as they walk into a courtroom.

2 The second matter is that there is a question
3 about whether or not this is an appropriate and
4 legitimate police interrogation tactic that leads to
5 what are, I'm sure, going to be argued by the State
6 are truthful statements by these witnesses when they
7 say that Chong Lee either -- they saw him do the
8 shooting or Chong Lee admitted doing the shooting to
9 them. And I'm intending to elicit expert testimony
10 that these are not good, solid police interrogation
11 techniques and that, in fact, using these kinds of
12 threats during the witness interviewing process,
13 coupled with promises of leniency should those
14 individuals give the police the information they
15 want, along with the feeding of information to these
16 witnesses, constitutes police interviewing techniques
17 that can obtain false statements.

18 THE COURT: Okay.

19 ATTORNEY VISHNY: So it really is two-fold,
20 but not to bring in substantively the issue of, well,
21 you're in one gang so your gang is covering up
22 against Mr. Lee because he's not in your gang. That
23 kind of thing.

24 THE COURT: No. If I understand correctly,
25 and to probably poorly paraphrase, your purpose is

1 not to utilize the references to gangs to prove the
2 truth of the matter asserted, it's more to say this
3 is the investigative technique that was going on,
4 that witness felt that because he was being tied into
5 a gang that he was going to be compelled to give
6 particular answers.

7 ATTORNEY VISHNY: Yes.

8 THE COURT: Is that largely -- the question
9 then -- and so far I'm following you on the logic.
10 The question I have is how do you get that out
11 without making reference to Mr. Lee perhaps being a
12 part of a gang or does it just come out and then
13 there is no further inquiry into that issue?

14 ATTORNEY VISHNY: Well, I have to look line
15 by line at the interrogations, but I don't think that
16 when the police interviewed these witnesses that they
17 said explicitly in these questions and answers, well,
18 Chong Lee is a member of this gang so therefore you
19 and he aren't members of the same gang so therefore
20 you must know or he must have told you. I don't
21 think it's -- it comes out like that in these
22 transcripts.

23 ATTORNEY SCHNEIDER: It's almost -- and if
24 I can just add to her point in that, unless there is
25 some points I'm missing, and there may be, Judge,

1 it's almost more dangerous because it is just left
2 broad. You're hanging out with these people, you
3 know these people. So then the jury might infer it's
4 Chong and everybody else we're talking about, it's
5 some of the people or none of the people.

6 ATTORNEY VISHNY: Except that the defense
7 theory is that really the initial suspect in this
8 case was Paul Lee, and the police investigation was
9 focused heavily on Paul Lee until Paul Lee say said,
10 no, it's my brother Chong who did it, and then the
11 police switched their investigation and they
12 interviewed everybody with Chong Lee in mind as a
13 suspect. I mean, we're not just going to show that
14 there was this type of interviewing where the witness
15 was interviewed and kind of being, you know, the
16 quasi threatening combined with promises of leniency
17 but that the interviews made it very clear to the
18 interviewees who the police wanted them to implicate,
19 and therefore that we have contaminated statements.
20 And it's impossible to really do this cross without
21 tying in what the police actually said, you know,
22 that -- so it was a combination of contamination,
23 threats and promises implied, implied promises. I
24 can't remember how explicit some of them were. There
25 were occasions where they were actually quite

1 explicit too. And I think it primarily centers on
2 the interrogations of Phong Lee, Paul Lee and Joe
3 Thor. There may be a much more minor extent to some
4 of the other witnesses, but my recollection is it
5 primarily has to do with these people. And they're
6 the most central witnesses to the State's case.

7 THE COURT: My -- my initial reaction is
8 that it -- it should be allowed to come in. My
9 concern is, is it creating more of a prejudice
10 against Mr. Lee than not by sort of leaving these
11 amorphous ideas out there, and I don't know that
12 that's -- I suppose that's more your issue than mine
13 to some degree. But here's what I'd like you to do.
14 I want you to think on that issue, and let me know if
15 that changes your position. My inclination is to
16 allow it.

17 ATTORNEY VISHNY: Okay.

18 THE COURT: But I want you to think on
19 that. And then, before I make my final decision, let
20 me know if your position changes.

21 ATTORNEY VISHNY: Okay.

22 THE COURT: The -- the other issue, and I
23 apologize, I am -- I've been going through the file,
24 my clerk has been going through the file. I have the
25 June 19th motion, I don't have the specific

1 excerpts.

2 ATTORNEY SCHNEIDER: That's within the June
3 19th motion, if you read Page 1 and then into --

4 ATTORNEY VISHNY: In the factual portion.
5 Right. I was reading directly from there.

6 THE COURT: Oh, you were. Okay. Oh, there
7 it is. Okay.

8 Let me at least dispense with the Facebook
9 issue, and then what we'll do is come back to these
10 other issues.

11 As the -- as the parties are aware, we have the
12 motion related to a search warrant involving a
13 Facebook account associated with the name
14 little.lee.1614. There's been a challenge to the
15 search warrant on many different fronts, those
16 including that the warrant was overbroad, was
17 conclusory, lacked probable cause, and the undercover
18 account infringed upon Mr. Lee's expectations of
19 privacy and law enforcement committed a trespass.

20 We'll look at each of those issues in turn.

21 Now, the first issue is that of the breadth.
22 And under the US and Federal Constitutions, persons
23 are to be secure from unreasonable searches and
24 seizures and, moreover, no warrant shall issue but
25 upon probable cause supported by oath or affirmation

1 and particularly describing the place to be searched
2 and the persons or things to be seized.

3 Now, of note for this portion of the analysis,
4 the affirmation must describe with particularity the
5 items to be sought. *State v. Sveum*, 328 Wis.2d 369.
6 A 2010 case. Now, in order to satisfy the
7 particularity requirement, the warrant must enable
8 the searcher to reasonably ascertain and identify the
9 things which are authorized to be seized. *State v.*
10 *Noll*, 116 Wis.2d 443, an '84 case. A general
11 description of the items to be seized is
12 constitutionally acceptable when a more specific
13 description is not available.

14 Now, against that above backdrop, it is asserted
15 that the warrant at issue was overbroad, whereas the
16 data sought was too expansive and the time frame for
17 which the information was sought was too large.

18 Now, the warrant in this case sought the
19 following information: Any and all records
20 concerning the identity of the user with the user ID
21 associated with the URL,
22 <https://www.facebook.com/littlelee> -- I'm sorry,
23 /little.lee.1614 (user contact information) including
24 birth date, e-mail address, physical address,
25 telephone number, user profile information (neo

1 print) and all photos uploaded (photo print); and all
2 IP logs for user from December 6, 2013 at 00:01 hours
3 central standard time to December 16th, 2013, 23:59
4 hours central standard time, or any and all
5 communications with Facebook users from -- and again,
6 that same time period.

7 In support of the expansiveness of the request,
8 the defense has directed the court to two cases,
9 *United States v. Ganas*, 755 F.3d 125, a 2nd Circuit
10 Court from 2014, and *US v. Galpin*, 720 F.3d 436,
11 again a 2nd Circuit Court case from 2013. While
12 those cases are not binding on this court, they are
13 nonetheless persuasive.

14 Now, in *Ganas*, the government copied several
15 hard drives belonging to Ganas and then retained
16 possession of those hard drives for an extended
17 period of time. Well into that retention period the
18 government sought a second search warrant and used
19 the retained information as a means to Ganas's
20 information. Ganas filed a suppression motion which
21 was granted and the court found that the retention of
22 the computer files was unreasonable in light of the
23 scope of the case.

24 In *Galpin*, the court took issue with the fact
25 that the search warrant sought largely information

1 related to, quote, violations of the NYS Penal Law or
2 Federal Statutes. Again, the court found this
3 language akin to a generalized warrant.

4 Notwithstanding the differences between those
5 cases and this case, the cases do bring to light a
6 concern that should be addressed, most particularly
7 that advances in technology and centrality of
8 computers in the lives of the average person have
9 rendered the computer hard drive akin to a residence
10 in terms of the scope and quantity of private
11 information it may contain. That said, to compare
12 the computer to a residence is not entirely on point
13 because computers hold so much personal and sensitive
14 information touching on many aspects of private life.
15 There is far greater potential for the intermingling
16 of documents and a consequent invasion of privacy
17 when police execute a search for evidence on a
18 computer. *US v. Walser*, a 10th Circuit case from
19 2001, 275 F.3d 981. To that same degree, the
20 knowledge necessary to understand a computer and its
21 nuances is greater than that necessary for searching,
22 by way of example, a residence, a location which most
23 people have at least a general understanding.

24 It is for this reason that there must be as much
25 specificity as reasonably possible.

1 In this case the search warrant identified
2 information for a limited period of time and for a
3 specific account. While the search warrant sought
4 information from both before and after the shooting,
5 as well as after Mr. Lee's incarceration, the court
6 does not find the time unreasonable, notwithstanding
7 the fact that the case was not planned, as the time
8 frame may have contained discussions about, amongst
9 other things, the gun utilized, the decision to go to
10 the club in question, as well as what happened on the
11 night in question. All of these things are at least
12 discoverable, if not relevant to the crime of
13 first-degree intentional homicide, which by -- which
14 the court would note was the crime identified in the
15 affidavit in support of the search warrant.

16 Now, aside from the date, there is also concern
17 over the content sought within the specific time
18 period. Again, while the court agrees that there is
19 greater potential for obtaining information than may
20 be beyond that which is germane to this case,
21 particularly given the potential for intermingling,
22 this must be weighed against the general skills of
23 the officer seeking information. It would be
24 unreasonable for the court to limit what on its face
25 may be reasonable based upon a concern that upon

1 closer examination the person requesting the
2 information may not possess computer know-how such
3 that the request could be defined with greater
4 precision. The question is one of reasonableness,
5 not of perfection. Elaborate specificity regarding
6 the items to be seized is not required in affidavits
7 for search warrants, and if a more specific
8 description is not available, general descriptions
9 are permitted. *State v. Noll*, 116 Wis.2d 443, an '84
10 case. The officers executing a search warrant are
11 entitled to support of usual inferences which
12 reasonable people draw from facts. *State v. Marten*,
13 165 Wis.2d 70, a '91 Court of Appeals case. A
14 warrant is sufficiently particular when an officer
15 reading the warrant's description would reasonably
16 know what objects are to be seized. Again, the *Noll*
17 case. Technical requirements of an elaborate
18 specificity once exacted under common law proceedings
19 have no place in this area. A grudging or negative
20 attitude by reviewing courts toward warrants will
21 tend to discourage police officers from submitting
22 their evidence to a judicial officer before acting.
23 *State v. Starke*, 81 Wis.2d 399, a '78 case.

24 In this case, as mentioned, the information was
25 related -- the information sought was related to a

1 single account belonging to an individual believed to
2 have engaged in the crime of homicide. The
3 information sought was largely identifying
4 information that is certainly relevant.
5 Additionally, the search warrant sought content and
6 communications which for the reasons discussed above
7 may also be germane.

8 While the court understands the concerns raised,
9 as well as the need to have particularity, the court
10 cannot conclude that the search warrant at issue
11 exceeds what should be considered as permissible.

12 Having concluded that on its face the warrant is
13 not overbroad, the court turns its examination to the
14 second issue with the search warrant, namely, that
15 the warrant should be disregarded based upon the
16 conclusory allegations contained within the warrant.

17 In this case Mr. Lee asserts that the search
18 warrant should be disregarded due to the conclusory
19 nature of the affidavit. In particular, and for this
20 argument, Mr. Lee takes issue with Paragraph 10 which
21 states, it was discovered through other investigative
22 techniques that Little Lee was identified as Chong
23 Lee, date of birth 9/15/85. Lee was later found to
24 be the individual that shot the victim in the head.
25 Now this paragraph was but one of 17 enumerated

1 paragraphs contained within the affidavit of
2 Investigator Michael Medina of the Appleton Police
3 Department. While courts shall not consider an
4 affidavit that is solely conclusory, as noted by
5 *State v. Higginbotham*, the court also recognizes that
6 affidavits for search warrants must be tested and
7 interpreted by magistrates and courts in a common
8 sense and realistic fashion. They are normally
9 drafted by non-lawyers in the midst and haste of a
10 criminal investigation. Technical requirements of
11 elaborate specificity once exacted under common law
12 pleadings, as mentioned, have no place. A grudging
13 or negative attitude towards warrants will tend to
14 discourage officers from submitting their evidence to
15 a judicial officer before acting. The court has
16 already identified that as coming from *State v.*
17 *Starke*.

18 To establish probable cause to support this
19 warrant, there must be some factual connection
20 between the items that are evidence of the suspected
21 criminal activity and the area to be searched.
22 Probable cause to believe that a person has committed
23 a crime does not automatically give the police
24 probable cause to search a house for evidence of that
25 crime. *State v. Marquardt*, 286 Wis.2d 204, a 2005

1 case.

2 In this case the affidavit, as mentioned,
3 contains 17 separate paragraphs. Of those
4 paragraphs, Paragraph 6 through 11 are factually
5 specific to the case at hand as opposed to more
6 generic background information. It is further
7 evident from the review of those same paragraphs that
8 the affiant partook in an active investigation into
9 the matter. While the detail in Paragraph 10 is more
10 conclusory than not, when examined against the
11 backdrop of the surrounding paragraphs and which add
12 to the explanation of how Little Lee came to be made
13 known and why the Facebook account is relevant, the
14 court cannot conclude in light of the low burden of
15 proof necessary for probable cause and the desire to
16 encourage the use of warrants that the warrant is
17 deficient due to being conclusory.

18 That said, this should not be construed to
19 suggest that the court would encourage further
20 affidavits that are this simple. While the court
21 understands that an officer in an investigation may
22 have many commitments, the court routinely encounters
23 affidavits in other matters that are much more
24 lengthy and detailed for crimes that are much less
25 serious than the matter at hand. Officers should not

1 find it acceptable to provide only the bare minimum
2 and instead should strive for excellence, a standard
3 which was not met in this affidavit.

4 That said, and as mentioned, the court cannot
5 conclude as a whole that the affidavit must fail.

6 The third argument proffered is that the
7 Facebook warrant should be disregarded based upon the
8 affidavit containing statements that were
9 deliberately false or made with reckless disregard
10 for the truth. In particular, the defense takes
11 issues with Paragraph 7 through 9 which state:

12 Paragraph 7: Upon arrival at Luna night club,
13 affiant made contact with the bartender, Sara Besaw,
14 who was working at the time of the incident and
15 thought she recognized one of the individuals leaving
16 the scene. Besaw said she saw an Asian male who
17 wears a light-colored vest with dark sleeves which
18 she recognized as Little Lee from her Facebook
19 friends.

20 Paragraph 8: After speaking with Besaw I
21 watched the surveillance video from the club and saw
22 a number of male Asians leaving the scene at the time
23 of the incident, one of which was wearing a
24 light-colored vest with dark sleeves and a hat.

25 Paragraph 9: Later that day affiant began to

1 monitor Little Lee on Facebook public access and
2 found that there was a posting between Little Lee and
3 other individuals on Facebook just prior to the
4 incident at Luna's club. Affiant identified Chong
5 Lee to have a Facebook account of
6 little.lee.1614@facebook.com.

7 Now, in order for some or all of the paragraphs
8 to be disregarded, the court must conclude whether
9 the statements were not only false, but that the
10 false statements were made with the reckless
11 disregard for the truth or were made intentionally
12 while known to be false. *Franks v. Delaware*, 1978
13 Supreme Court case, 98 S.Ct. 2674.

14 Now, the central complaints of the defense are
15 that Officer Medina repeatedly made statements
16 indicating that he obtained information by way of
17 public access versus private access. Moreover, it
18 was pointed out how the police actually used multiple
19 undercover accounts to access Mr. Lee's account
20 versus obtaining the information exclusively by means
21 of Sara Besaw's account.

22 As a secondary complaint, it is pointed out how
23 references to Mr. Lee's clothing should not be given
24 any credibility whereas the camera identifying the
25 clothing did not have reliable color discerning

1 ability.

2 With respect to the former, the court is
3 concerned at the failure of Officer Medina to
4 accurately recollect events related to a crime of
5 such magnitude. Officer Medina is a seasoned
6 officer. He should be aware that to the extent an
7 individual is not able to photographically recollect
8 events and occurrences, a skill which this court
9 would note is not common, there should be substantial
10 and accurate documentation of events. The reason for
11 this is to avoid the situation such as the one we
12 have here where Officer Medina is being required to
13 recall events from several months prior in which his
14 recollection of the same is fading. That said, while
15 the defense has shown Officer Medina to be somewhat
16 sloppy in his investigation on the issue of public
17 versus privacy and friend versus non-friend, as the
18 parties are aware, this is not the standard at issue.
19 The question that must be answered is whether the
20 statements at issue were false and were made with
21 reckless disregard for the truth or were made
22 intentionally while known to be false. Defense has
23 not done this. Simple errors in recollection and
24 even false statements alone are not enough to grant
25 the requested relief. There must be a showing of an

1 intent to deceive.

2 The same issue exists with respect to the
3 clothing. While Officer Medina's reliance on video
4 to describe the clothing may have been unwise, the
5 court cannot conclude that the description was done
6 with the intent to deceive or gain an otherwise
7 tactical advantage. While there are many plausible
8 explanations, it is not lost on the court that Miss
9 Besaw was watching the surveillance video with
10 Officer Medina and the description may have been
11 based on what they both saw. Again, the court does
12 not state that this is what happened, but it is a
13 plausible explanation and thus negates the showing
14 necessary for the court to suppress based on the
15 *Franks'* case.

16 The final argument that the defense has raised
17 were those brought to light at the court's request,
18 and those issues relate to consent.

19 In this case the defense points out that usage
20 of the undercover account violated certain terms of
21 usage of Facebook. While this may be true, such a
22 violation does not become a violation of the law.
23 The court would also note that in this instance, and
24 based upon the understanding as to the other
25 undercover accounts, Mr. Lee would have to accept the

1 friend request to allow the officers to view some of
2 his information. While the practice may have been
3 deceptive, such deception, as noted by the
4 prosecution, is not illegal. Although not perfectly
5 analogous, it is well established that a government
6 agent may accept an invitation to enter a private
7 dwelling in the same manner as private persons for
8 the very purposes contemplated by the occupant. To
9 that same end, it has long been acknowledged that
10 valid consent for entry of government agents into a
11 dwelling may be obtained even though accomplished by
12 deceit and concealed identity. *State v. Johnston*,
13 184 Wis.2d 794, a 1994 case. The court sees no
14 reason to treat the instant situation as different
15 from the precedent found in the *Johnston* case,
16 particularly whereas there has been no argument that
17 Mr. Lee was not the one to accept the friend request
18 of the undercover agent.

19 The court also finds that Miss Besaw was able to
20 give consent to her accounts, which then allowed
21 access to her friends. Therefore, the court takes no
22 issue with this aspect of the officer's conduct.

23 And thus, and for the reasons stated, the motion
24 with respect to Facebook suppression is denied.

25 I'm assuming that the parties would prefer

1 ruling on the other two issues much sooner than the
2 24th. Is that a fair statement?

3 ATTORNEY VISHNY: Yes.

4 ATTORNEY SCHNEIDER: Yeah.

5 THE COURT: I will have my judicial
6 assistant either come out or we will get with the
7 parties and get a telephone date on those two issues
8 within the next week or so, if that works.

9 ATTORNEY SCHNEIDER: Okay.

10 ATTORNEY VISHNY: Within the next week or
11 so we're going to talk about the date?

12 THE COURT: No. I'll give you a telephone
13 decision on those two issues.

14 ATTORNEY VISHNY: Okay. Just so you're
15 aware, I'm basically unavailable the rest of this
16 week and all of next week.

17 THE COURT: Not a problem. We'll work
18 around that.

19 ATTORNEY VISHNY: So my availability -- I'm
20 partially available the week of the 12th. Later in
21 the week -- thursday the 15th, is really good.

22 ATTORNEY SCHNEIDER: By telephone, you mean
23 Attorney Vishny doesn't have to drive up for it.

24 THE COURT: Right.

25 ATTORNEY SCHNEIDER: Okay. Do you want him

1 just to issue a written decision?

2 THE COURT: Sure. I can do that.

3 ATTORNEY VISHNY: Is October 15th okay?

4 THE COURT: That's fine.

5 ATTORNEY SCHNEIDER: And obviously, if you
6 run into an issue or you need further clarification,
7 you'll just advise, but otherwise you'll issue a
8 written decision by October 15th.

9 THE COURT: Let me ask this, Attorney
10 Vishny. I apologize if I suggested you hadn't
11 contemplated it. On the gang-related issue, I'm
12 confident you've considered that issue, your position
13 is not going to change.

14 ATTORNEY VISHNY: No, it's not. My
15 position is that we should be allowed this
16 cross-examination and that it won't open the door to
17 substantive presentation that Chong Lee is actually
18 in a particular gang.

19 THE COURT: Okay.

20 ATTORNEY VISHNY: So that -- that's the
21 defense position. It's not going to change. If for
22 some reason I thought it was a really bad idea as I
23 prepare further for trial, then I wouldn't ask the
24 questions.

25 THE COURT: Miss Schneider, anything else

1 you want to add on that issue?

2 ATTORNEY SCHNEIDER: No. And I think when
3 we discussed this before, in some ways we're trying
4 to be cautious before we delve into an area and then
5 have to argue what has this opened the door to, but I
6 think we still may have to cross that bridge when we
7 get to it.

8 THE COURT: And that's -- my inclination is
9 I'm going to allow that. I think, Attorney Schneider
10 and Attorney Vishny, as we've talked about before, we
11 are -- we're -- there is still the possibility we may
12 have to have a side bar and say, wait a minute,
13 Judge, the jury has to step out and we need to
14 address this on an individual basis, but, in concept,
15 I am going to allow the questioning of the -- it
16 would be the questioning of the individuals who were
17 interrogated as it relates to the gang.

18 ATTORNEY VISHNY: Right.

19 ATTORNEY SCHNEIDER: The officers used gang
20 references or gang threats. It would be like
21 comments about gangs in a way that threatened or
22 influenced or was improper.

23 THE COURT: And that in and of itself will
24 not open the door to further gang inquiry, but again,
25 you'd reserve the right to ask for a side bar and

1 say, Judge, I think now we've opened the door.

2 ATTORNEY SCHNEIDER: Yeah. We're going to
3 -- my guess, and this is just my guess, is that we're
4 going to have to be very cautious about how they
5 respond to some of those questions, because I could
6 see somebody, even though we tell them not to, say,
7 well, we all were, you know what I mean?

8 ATTORNEY VISHNY: Well then the witnesses
9 are going to have to be instructed before they take
10 the stand as to what they can and can't say.

11 ATTORNEY SCHNEIDER: I know that, but I
12 just -- I've done that and then had them come in and
13 not -- and ask a question or had the other side ask a
14 question not thinking that was going to come as a
15 response.

16 ATTORNEY VISHNY: I'm not too worried about
17 the police, instructing them, because -- but I also
18 know how to ask very tight, leading questions, and --

19 ATTORNEY SCHNEIDER: I think what we've
20 done is we tell them if you feel you get stuck and
21 you can't answer without saying gang or something
22 about that, then you have to look at the judge and
23 say, I'm not sure how to answer this question. If
24 we're not picking up on it. At least that's kind of
25 what I've done with other witnesses before. They

1 investigation that took place on December 13th of
2 2013?

3 A I did.

4 Q And that investigation, as I understand it, had to do
5 with seizure of contraband from the post office,
6 correct?

7 A It was an assist of the United States Post Office,
8 correct.

9 Q Okay. And when you came and spoke with -- I'm not
10 going to ask you any questions regarding the
11 investigation into the postal matter at all.

12 A Okay.

13 Q When Noah Vang was taken into custody pursuant to
14 that investigation, did you try to speak with Noah
15 Vang regarding not only that investigation but
16 whether or not he had any information that was
17 pertinent to a shooting that had taken place at the
18 Luna tavern which resulted in a homicide?

19 A I did.

20 Q Okay. And at whose direction did you attempt to
21 interview Noah Vang regarding that homicide?

22 A I don't recall specifically. I had spoken with
23 several investigators from the City of Appleton
24 Police Department reference the incident at Luna
25 Lounge, but I do not recall specifically who I spoke

1 to about speaking with Noah.

2 Q Okay. When you spoke with Noah, or attempted to

3 speak with Noah Vang regarding the homicide, did you

4 record your conversation with him?

5 A I did.

6 Q And was that recording preserved?

7 A It was.

8 Q Have you refreshed your memory about what occurred by

9 listening to that recording today?

10 A I watched it very briefly, yes.

11 Q Okay. How long is the recording altogether?

12 A It is, I believe, an hour and 14 minutes total,

13 approximately.

14 Q And did you watch the entire thing today?

15 A I did not.

16 Q What did you watch today?

17 A The video portions where you can see myself speaking

18 with Mr. Vang.

19 Q And did that -- did the part you watched cover in

20 their entirety your conversation with Mr. Vang

21 regarding the Luna homicide?

22 A It covers portions of it. In the very beginning I

23 state that I wanted to talk to Noah further, and I

24 don't recall if at the time he was arrested I spoke

25 to him about the events that occurred Saturday or if

1 it was just about the case that we were working with
2 the postal service. So whatever is on the video is
3 all that I have answers for.

4 Q What questions did you ask Noah Vang about the Luna
5 homicide?

6 A I asked him where he was that night, I asked him who
7 he was with. Specifically from the video, I asked
8 him if he ran away or if he saw people running away,
9 and I asked him if he drove home.

10 Q What answers did he give you to your questions?

11 A Without watching the video, I don't want to give the
12 wrong names. He stated two names. Without assuming,
13 I believe it was Thong Phong and possibly Joe, and at
14 the very end of the interview I had asked him if he
15 was with Paul, I believe.

16 Q Okay. And what did he say regarding that?

17 A The first two were affirmative, as far as Thong and
18 Joe.

19 Q Would that be Thor or Thong? Would that be Phong,
20 P-H-O-N-G?

21 A Possibly, yes.

22 Q Okay. And they were affirmative, meaning?

23 A He did state that he was with individuals. Like I
24 said, without watching the video again, I don't want
25 to give the wrong names. And then the very last

1 question that I asked him, I believe it was the name
2 Paul, I asked him if he was with Paul, and he stated
3 that he didn't want to answer anymore questions.

4 Q Did he answer anymore questions at all?

5 A No.

6 Q Did he ask for a lawyer?

7 A No.

8 Q Did you attempt to reinterview him on any later date
9 regarding the Luna homicide?

10 A No.

11 Q Are you aware of whether or not any other
12 investigators at the Appleton Police Department
13 attempted to interview him later regarding the Luna
14 homicide?

15 A I'm not.

16 Q Did you write a report regarding this interview?

17 A I did not.

18 Q After the interview, did you have any conversation
19 with anybody at the Appleton Police Department
20 regarding information or lack of information that you
21 obtained in this interview?

22 A I did. I can't say specifically whom.

23 Q Was that back at the time, back in 2013?

24 A That was.

25 Q Okay. And you just don't remember who it was.

1 A I have no clue.

2 Q And the interview in its entirety is accessible and
3 available to be watched, correct?

4 A It is.

5 ATTORNEY VISHNY: I have nothing further.

6 THE COURT: Attorney Schneider.

7 **EXAMINATION**

8 **BY ATTORNEY SCHNEIDER:**

9 Q You were working as part of an officer assigned to
10 the MEG Unit at the time, correct?

11 A Correct.

12 Q So you were also there in your role in investigating
13 the postal office investigation at the same time?

14 A Correct.

15 Q You said the entire length was an hour and 14
16 minutes. Is that -- was that the entire interview
17 with Noah or is only portions of that when you're
18 speaking with Noah?

19 A The -- the video that is an hour and 14 minutes is
20 video from a single room which Noah is seated in.
21 Initially when he's brought into the room he's
22 brought into the room by two US postal inspectors,
23 spoken to. I'm present for that. And then I begin
24 questioning him on the questions I just testified to.
25 And then long portions of that are him seated in the

1 room alone. And then at the end of it he's released
2 without charges.

3 Q Okay. And so the nature of what you asked him and
4 that he agreed to answer was asking him if he was
5 with Phong or Joe or he made comments that he was
6 with a Phong and a Joe?

7 A I believe those are the names. I don't want to give
8 the wrong names, but he does -- he does say or I do
9 ask specifically names that he -- asking if he was
10 with and he replied that he was.

11 Q And Paul also was one of those names?

12 A That was. Cautiously I say that was the last name
13 that I gave him.

14 Q Okay. But did not give any further information at
15 all, other than that?

16 A Besides the fact of locations he was at, he stated
17 that he was at some locations that night and that he
18 had driven home, that he had seen people running
19 away, that was basically the entirety of our
20 conversation.

21 Q Okay. And have you -- I know we asked you, because
22 this was unexpected to have you come today, did you
23 bring copies of that recording with you?

24 A I did.

25 Q Do you have multiple copies or just one?

1 A I have two copies.

2 ATTORNEY SCHNEIDER: I'll make sure - and
3 we'll use our Bates numbering system when we're
4 done - that Attorney Vishny gets one of those copies
5 today, Judge.

6 THE COURT: That's fine.

7 Q (BY ATTORNEY SCHNEIDER) And when you were done with
8 this investigation, the recording you have was placed
9 into the MEG Unit file; is that correct?

10 A That's correct.

11 Q And it has been there, that's where you received it
12 or recovered it from today?

13 A That's correct.

14 ATTORNEY SCHNEIDER: I have nothing else
15 then at this time, Judge.

16 THE COURT: Attorney Vishny.

17 **EXAMINATION**

18 **BY ATTORNEY VISHNY:**

19 Q You said the recording was placed in the MEG Unit
20 file. Does that then get cross-referenced with the
21 homicide files that are kept or not?

22 A I have no knowledge of which files you're talking
23 about. I -- I can't answer that accurately. I --
24 when we -- when we log evidence, it's logged under
25 this specific case.

1 Q So was it only logged under the drug case or was it
2 also logged under the homicide case?
3 A I only logged it under the drug case.
4 Q Okay. What's your badge number or your officer
5 number?
6 A I have two radio distinctions, one is for the City of
7 Appleton, that's 9202, and one is through the Lake
8 Winnebago MEG Unit which is Zebra 56.
9 ATTORNEY VISHNY: Do you have Exhibit 1
10 there?
11 Q (BY ATTORNEY VISHNY) I'm going to show you Exhibit
12 1, and I don't know if you've ever seen this before
13 or not. I'm going to show you Exhibit 1. It's a
14 white board concerning the homicide investigation.
15 Does that look familiar to you at all?
16 A The white board?
17 Q Yeah.
18 A I can't say that it does specifically.
19 Q Okay. So do you know anything about the fact --
20 9202, that's your name and Noah Vang and a check mark
21 next to it. Do you have any idea how that got
22 there?
23 A I do not.
24 Q Okay.
25 ATTORNEY VISHNY: Nothing further.

1 THE COURT: Attorney Schneider, any
2 follow-up?
3 ATTORNEY SCHNEIDER: No.
4 THE COURT: Investigator, thank you for
5 your testimony.
6 THE WITNESS: I apologize for the
7 appearance.
8 THE COURT: That's all right, sir.
9 Anything else, Attorney Vishny?
10 ATTORNEY VISHNY: No.
11 ATTORNEY SCHNEIDER: I'll take that.
12 THE COURT: Attorney Schneider?
13 ATTORNEY SCHNEIDER: Just one second, I
14 can --
15 THE COURT: You're excused, Investigator.
16 ATTORNEY VISHNY: Well, Judge, as far as
17 Noah Vang is concerned, I think that closes that
18 issue because the State is going to provide defense
19 counsel with the tape.
20 THE COURT: So there will be no briefing?
21 ATTORNEY VISHNY: Not on that issue, but
22 there will definitely be a briefing on the issue
23 which I have filed the motion on which was whether or
24 not statements by Ryan Thao, Mikey Thao and Watou Lee
25 should -- for what the scope of their permissible

1 testimony would be in court in light of the
2 destruction of evidence. That's really what I have
3 filed my motion on, took the opportunity of a motion
4 hearing to -- let me just say that this event of
5 recording -- destroying these tapes altered my
6 perception of whether or not I was always being given
7 a hundred percent accurate information regarding
8 discovery, as well as the provision of reports now
9 for interviews that took place almost two years ago.
10 So having seen some things missing and not being
11 quite sure about what occurred, I thought it was a
12 good opportunity to ask about these issues and try to
13 resolve these outstanding matters.

14 THE COURT: Okay.

15 ATTORNEY VISHNY: But the issue remains
16 before the court as to what remedy the court should
17 fashion for what we are saying, no matter how
18 somebody testified, was the intentional destruction
19 of evidence in this case. So I have filed a motion.
20 I think we have a factual basis to proceed with the
21 motion, and we have begun doing some of the
22 additional legal research.

23 THE COURT: And what time frame -- with
24 that, what time frame would you like for further
25 briefing and then we can go from there?

1 ATTORNEY VISHNY: Right. I hate to do
2 this, but I'm not sure I can have something ready
3 before November 5th. I have quite a bit -- I'll try
4 to get it in earlier, but I also have another
5 homicide between now and then, as well as --

6 THE COURT: We have November 5th and then
7 we have November 24th.

8 ATTORNEY VISHNY: If I can get it done
9 sooner, I will.

10 THE COURT: Let me ask that. Can we have
11 -- well, I don't know that Attorney Schneider would
12 then be able to respond. What I'm wondering, if we
13 couldn't just argue it on the 5th and provide case
14 law at that point in time.

15 ATTORNEY VISHNY: That would be fine.

16 THE COURT: And then have a decision for
17 the 24th.

18 ATTORNEY VISHNY: That would be fine. If I
19 can put something in writing before then, I'll do it
20 and just e-mail it.

21 ATTORNEY SCHNEIDER: I -- if she's not
22 going to file anything before then, I don't know how
23 I'm going to respond.

24 ATTORNEY VISHNY: I'll try to file
25 something, I just --

1 THE COURT: Why don't we do this. We'll
2 file on the 5th. Miss Schneider, I'll give you ten
3 days or thereabouts to respond. And then what I will
4 do is I'll have a decision for you on it -- for both
5 of you on the 24th.

6 ATTORNEY SCHNEIDER: That works.

7 ATTORNEY VISHNY: That's fine.

8 ATTORNEY SCHNEIDER: So if we do defense
9 filing on the 5th, I'll file my response on the 16th,
10 which is a Monday?

11 THE COURT: That's fine.

12 ATTORNEY SCHNEIDER: As opposed to Sunday.
13 And then we'll take it up on the 24th.

14 THE COURT: Very good.

15 ATTORNEY SCHNEIDER: Judge, just -- I'll
16 plant this seed now, and maybe if Attorney Vishny
17 wants to make a suggestion, in the hallway we were
18 just thinking of other housekeeping things. I
19 explained normally we get a pool of anywhere from 70
20 to 80 or 90 for this specific trial date. We had
21 previously asked the court to, the morning of, and I
22 think I'm going to move that back to maybe like 1:00
23 the day before, have the court give us that in an
24 unrandom order. I think originally the clerk will
25 give us it to us alphabetical by last name, but then

1 the day before we'll get the list in the order
2 they're going to be called, and I explained we
3 normally call up however many we have that will sit
4 with our strikes, we voir dire just that group of
5 people, the rest are in the same room we are
6 listening to additional questions.

7 THE COURT: Correct.

8 ATTORNEY SCHNEIDER: And Attorney Vishny
9 may have some concerns about that, so I don't know if
10 she just wants to submit a letter on that and we can
11 discuss it on November 5th, but we were just talking
12 about trying to get ready and other things we'll need
13 to do that day.

14 THE COURT: Anything else, Attorney Vishny?

15 ATTORNEY VISHNY: Not at this time.

16 THE COURT: Attorney Schneider?

17 ATTORNEY SCHNEIDER: No.

18 THE COURT: All right. Then we are
19 adjourned for today's proceedings.

20 ATTORNEY VISHNY: Thank you.

21 ATTORNEY SCHNEIDER: Thank you.

22 (Proceedings concluded.)
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF WISCONSIN)
) ss.:
COUNTY OF OUTAGAMIE)

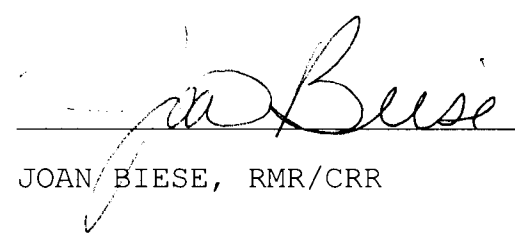
I, JOAN BIESE, RMR/CRR, do hereby certify that I
am the official court reporter for Branch IV of the
Circuit Court of Outagamie County;

That as such court reporter, I made full and
correct stenographic notes of the foregoing proceedings;

That the same was later reduced to typewritten
form;

And that the foregoing proceedings is a full and
correct transcript of my stenographic notes so taken.

Dated this 15th day of October, 2015.


JOAN BIESE, RMR/CRR